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PROCEEDINGS AND DEBATES OF THE 102d CONGRESS, FIRST SESSION

SENATE—*Wednesday, October 30, 1991*

(Legislative day of Tuesday, October 29, 1991)

The Senate met at 11:30 a.m., on the expiration of the recess, and was called to order by BOB GRAHAM, a Senator from the State of Florida.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

And he shall judge among many people, and rebuke strong nations afar off; and they shall beat their swords into plowshares, and their spears into pruninghooks: nation shall not lift up a sword against nation, neither shall they learn war any more.—Micah 4:3.

God of peace, justice, and righteousness, we pray for the meeting in Madrid. Grant to each representative the desire, the wisdom, and the courage to make a strong stand for peace in the Middle East as they negotiate a struggle 4,000 years old. Help those who seek peace to acknowledge the limitations of human efforts at their best and to recognize the reality that God alone can bring peace. Despite their diversity in religious beliefs, give them grace to look to the God of Abraham who reigns in righteousness.

We thank You, Father in Heaven, for the untiring efforts of Secretary Baker. We pray Your protection upon him, his staff, and every participant against evil intentions of terrorists who are prepared to prevent peace at any cost. Cover the meetings with Your grace and love.

We pray in the name of Jesus, Prince of Peace. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, October 30, 1991.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable BOB GRAHAM, a Senator from the State of Florida, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. GRAHAM thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

Mr. MITCHELL. Mr. President, I ask unanimous consent that I may be permitted to use as much of my leader time as I may consume.

The ACTING PRESIDENT pro tempore. The Senator has that right. The Senator from Maine, the majority leader.

SCHEDULE

Mr. MITCHELL. Mr. President, today during the period for morning business, two Senators are to be recognized to address the Senate for 10 minutes each. When the period for morning business closes at 12 noon today, the Senate will resume consideration of S. 1745, the civil rights bill, at which time the bill will be considered under the terms of a unanimous-consent agreement entered late last night and printed on page 2 of today's Calendar of Business.

In view of the agreement and the time limitations contained in that agreement, Senators should be aware that the votes on amendments could occur in fairly rapid succession and that four rollcall votes are possible.

Upon disposition of the civil rights bill, it is my intention to bring up the conference report accompanying H.R. 2686, the Interior appropriations bill.

Once that conference report is before the Senate, Senators are again notified—I am now notifying them and they therefore should be aware—that rollcall votes are possible relative to any amendments which may be offered to amendments in disagreement to the conference report.

Therefore, Mr. President, during today's session Senators can expect a number of rollcall votes to occur relative to the civil rights bill and to the Interior appropriations conference report.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. There will now be a period for the transaction of morning business not to extend beyond the hour of 12 noon, with Senators BOREN and LEVIN permitted to speak therein for up to 10 minutes each.

The Senator from Oklahoma.

Mr. BOREN. Mr. President, I thank the Chair.

CONGRESSIONAL REFORM

Mr. BOREN. Mr. President, I am continuing today a series of speeches that I pledged to make on the floor, coming to the floor each and every week until Congress begins to move in a meaningful way toward reform of this institution, which is so badly needed.

All of us from time to time reflect about those things that give meaning and purpose to our lives. I think most of us, when we really sit back and think about what we want to do with our lives, come to the conclusion that it is very important, if one is to feel satisfied and productive in individual life, to be a part of something that is bigger than one's self. That is certainly true for those of us who have the privilege of serving in the U.S. Senate.

We cannot walk into this Chamber without a realization that we are part of an institution and a political process set forth in our Constitution that has served this country so well for so long, that is a cause more important than the political success of any individual

or the personal success of any individual that is a part of this institution. We have a tradition in this Chamber of writing in the desk drawers of the desks that are all around this floor. If you pull open the drawers of any desk, you will find chiseled inside the names of those Senators that have used these desks in the past.

I have been privileged since I have been a Member of the Senate, to use a desk in which, when I opened the drawer, I found the name of Harry Truman inside. I have a desk now in which, when I open it, I find the name of T.P. Gore, the first Senator from my State at the time of statehood, the only totally blind Senator to ever serve in this Chamber; the name of Richard Russell, great leader of the Senate, after whom the Russell Building was named because of his devotion to this institution, to its vitality. There are the names of Clay and Webster and Calhoun. There are the names of other Presidents of the United States that have served in this body. There are the names of LaFollette and Taft and Humphrey and other great Senators of both parties who have made contributions to this institution for many years.

Mr. President, what a privilege it is to be a part of a cause and a process, the representation of the American people, the holding together of a sense of community and the sense of social fabric in this country, a cause far more important than the personal interests of any of us.

The circumstances we now face call upon us to have a renewed sense of loyalty to that constitutional process, a renewed sense of our duty as trustees of this institution to keep it strong and great.

Over the last few years and, even more, over the last few weeks, events have taken place which have obviously, if we are to believe the public opinion polls—and I say to my colleagues if we would go home and talk to the people themselves—shaken the confidence of the American people in this institution. The warning signs are clear for all of us to see, if we would simply heed them.

I can quote a letter I received from one of my constituents from Muskogee, OK, a couple weeks ago. I come, after reading that letter, to a full understanding of the depth of the concern of people in this country about the well-being of this institution. I want to share with my colleagues a few of the comments made by my constituent and fellow citizen from Muskogee. He said:

> I can tell you for a fact that "mainstream America," the ones who are paying the bills, are disgusted with the Government and its actions. I am in a position to hear people from most all walks of life, political persuasion and occupations and the one thing nearly all agree on is, "I am disgusted with this Government, all of it, and things need changing, drastically in Washington."

We are well aware of the timeworn proposed remedy, "vote the rascals out," but this just isn't possible with the great advantage an incumbent has for reelection. (A condition brought about by elected officials in their own self-interest.)

We need to listen to these warning signs and signs of discontent across the country. The people are not wrong to have these feelings. They have been echoed by editorial writers across this country. The New York Times just this Monday, for example, in an editorial entitled "Congress Spiraling Downward," said the following:

> It's scarcely news that Americans are disenchanted with Congress and politicians generally. It is news when two-thirds of the people think that politicians are corrupt.
>
> According to a New York Times/CBS News Poll taken after the House banking scandal and the Senate's embarrassing Clarence Thomas hearings, only 29 percent of Americans say they like the way Congress is handling its job. More devastating was the response when people were asked whether politicians generally were "financially corrupt" or "honest." Only 34 percent said: honest.
>
> The need to restore integrity to political life is obvious. And the best place to begin is at the top, with a massive overhaul of Congress's odious system of campaign financing. The honesty question wasn't aimed specifically at members of the House and Senate. But there's little doubt that the sense of self-indulgence Congress conveys is a huge factor.
>
> If the polls are right, the public would welcome almost any reasonable alternative to business as usual. If Congressmen genuinely care about their institution, and not just themselves, they have no choice but serious reform.

Mr. President, several of us in this Chamber have joined together to make a proposal just as we did in 1947 when the Monroney-LaFollette committee was created, a committee of limited duration which operated without a huge paid staff with the voluntary help of citizens who wanted to contribute something to their country.

It is time for us once again to make such an effort, to look at a major overhaul and reform of this institution so that we can hand it on to the next generation as it was given to us, strong, and meaningful, committed to solving the real problems of this Nation, committed to getting America ready to meet the challenges of the next century, committed to handing on a heritage to the generation that will follow us that will not be diminished but enhanced because of our own sacrifices. I want to thank and commend 15 Members of the Senate who have joined together in making this proposal.

I had a very good conversation this past week with Chairman WENDELL FORD, a Senator from Kentucky, chairman of the Rules Committee, who has assured me that within the constraints of time—because it will be difficult this fall to have more than perhaps an introductory hearing on this subject—that in a timely fashion the Rules Committee will allow hearings and seriously look at the proposal which we made.

I want to name the other Senators who have joined with Senator DOMENICI and myself, and with Congressman HAMILTON and Congressman GRADISON on the House side, in bringing this major proposal to reform Congress. They include Senators SIMON, SEYMOUR, CHAFEE, GRASSLEY, LUGAR, NUNN, LOTT, KOHL, MCCAIN, SPECTER, GRAHAM of Florida, REID, and PRYOR.

I thank those Senators for joining with us in this effort and I hope many others in this body will join in cosponsoring our proposal. Sixty-one Congressmen have now sponsored it on the House side. Yesterday, 20 freshmen Members of the House called a meeting and held a press conference to urge the Speaker to act on that side.

There are already those who have devoted themselves to making improvements in this institution, and their efforts should not go unnoticed.

I want to call attention specifically to the efforts of Chairman FORD, chairman of the Rules Committee, who has worked long and hard to reduce the costs of Congress and to make Congress more efficient. For example, because of his efforts and the initiative he has taken as chairman of the Rules Committee to reduce the mass mailing cost by Members of Congress, this year those costs will be under $10 million, whereas in 1986 the cost for Senate mass mailing and official mail exceeded $35 million. It is movement in the right direction. He deserves credit for moving us in the right direction.

Now it is my hope that all of us on both sides of the aisle in the U.S. Senate can join together and have effective action to look at a major overhaul of this institution, and do it with our colleagues in the House and not wait. We must not wait any longer. Those of us who care about this institution, those of us who came here and ran for office, because we wanted to make a difference in this country, because we wanted to contribute whatever we could to making this country better, to strengthen our economy, provide educational opportunities for our children, and for protecting the national security of our country, those of us who came here wanting to be part of an institution where we could make a contribution must be part now of an effort to recraft, rebuild, and revitalize this institution so that we will have the opportunity to weigh in on the major problems that are confronting us.

I see the distinguished President pro tempore of the Senate has just come on the floor. For years, for a decade, he has been the historian of this Senate as no other Member has, and he has called for meaningful and comprehensive campaign finance reform.

I just quoted that letter from the constituent of mine saying we must have change, saying it is unfair, be-

cause Members of Congress under the current campaign system the way we finance our campaigns have an advantage to stay in office. I just quoted the New York Times editorial on the need for campaign finance reform. The distinguished Senator from West Virginia when he was majority leader called for a record number of votes trying to end filibusters so we could have acted several years ago. The current majority leader of the Senate, the Senator from Maine, has continued that effort in a meaningful way.

Could I ask unanimous consent for 1 additional minute, to conclude, from my colleague from Michigan?

Mr. LEVIN. Mr. President, I am happy to yield to my friend, the Senator from Oklahoma, an additional 3 minutes.

Mr. BOREN. Mr. President, I thank my colleague. We must not wait. The Senate has passed S. 3, a campaign finance reform measure that is now pending in the House. We must not allow this Congress to end without action on the other side of the Capitol so that early next year we can get together, House and Senate together, and work out a compromise measure.

The distinguished minority leader is on the floor, Senator DOLE. He has indicated a great desire to try to fashion a bipartisan compromise after action in the House. It is time for us to move when the average Senate winner of a campaign spends $3.8 million getting elected. When the political action committees give 77 percent of all their millions of dollars of contributions to incumbents, when incumbents have an 8-to-1 spending advantage in campaigns, it is time for campaign finance reform. We want to restore the confidence and trust of the American people in this institution. We must move on this issue among others to show that we really mean business about the reform. We must not rest until we get action.

Mr. BYRD. Mr. President, will the Senator yield?

Mr. BOREN. Yes.

Mr. BYRD. Mr. President, when you go to the Scriptures, you find support for what the Senator is saying. The Scriptures say a love of money is the root of all evil. That applies here.

When we think about the time that Senators have to spend running all over this country, raising campaign funds for the next election, to pay off the debt for the last election, if they want to remain in public service, it takes them away from the Senate, and it takes them away from the committees.

The Senate has lost its soul. It is not like it was when I came here 33 years ago. We do not have the debates that we used to have. We do not go into matters on this floor like we used to when I first came here. The reason is the money chase. Members cannot stay here and do their work. Raising campaign funds is a full-time job.

I thank the Senator for his continuing contributions to the effort to make the Senate the body that it once was. To do that we have to get rid of this campaign financing evil. The love of money applies in politics as well. It is the root of all evil.

Mr. BOREN. Mr. President, I thank my distinguished colleague. As I say, he is the historian of the Senate, and in many ways is the conscience of the Senate.

I say again to my colleagues who are listening, join with us in the reform effort. Join with us in cosponsoring the concurrent resolution.

I say to my colleagues in the House, please pass campaign finance reform before the year is over. We are the trustees of this institution. If we do not take care of it, no one else will.

The ACTING PRESIDENT pro tempore. The Senator from Michigan is recognized for 10 minutes.

Mr. LEVIN. Mr. President, I am happy to yield to my friend, the Senator from Kansas, the Republican leader, Mr. DOLE.

Mr. DOLE. I will take about 3 minutes. I thank the Senator. I appreciate it.

Mr. President, I want to speak a minute on the Madrid talks that are underway.

MADRID TALKS BEGIN

Mr. DOLE. Mr. President, the cliche says that a picture is worth a thousand words. If that is so, the pictures today from Madrid—pictures of Arabs and Israelis, together around a table—those pictures speak eloquently of the historic nature of these talks.

For more than four decades, the nations and people of that region have lived with war, and violence, and hatred, and suspicion. Today, they begin to talk about peace.

President Bush's opening remarks struck exactly the right note; or, to be more precise, exactly the right two notes: hopeful, but realistic.

The President stressed that this is a unique opportunity; the kind of opportunity that another American President, in another era, talking about another situation, called the last, best hope for peace. If these talks finally fail, a unique chance for real peace, at a unique point in world history, will be lost.

He put the monkey squarely on the backs of the delegations and delegates gathered in Madrid. It is up to them to put aside prejudice and propaganda, and sincerely explore the possibilities for peace. It is up to them to give peace a chance. The fate of their children and grandchildren is in their hands.

The President stressed that the goal of this Conference must be a real peace, not short-term, Band-Aid palliatives. A real peace means binding treaties, formal diplomatic relations, mutually beneficial economic relations. A real peace means security for Israel, and for all the other nations of the region. A real peace means justice for the Palestinians, and all the other people of the region.

President Bush reminded everyone, too, that successful negotiations require not just posturing and propaganda, but real give and take. Compromise. Giving something to get something. All sides have to give. All sides have to get. Otherwise these talks will not work, and there will be no peace for anyone.

Finally, the President talked frankly about the tough tasks ahead. Today is a day of great hope; but it must also be a day for realism and determination. These talks will not be easy. They will not be quick. They will not produce peace tomorrow, or next week, or next month.

This is a marathon, not a sprint. And we all better be ready to go the full 26 miles of this marathon—and then be ready to go the extra mile for peace.

I am convinced President Bush is ready. Ready to provide the same kind of steady, sure leadership that catalyzed this Conference. Ready to do that for as long as it takes.

I hope the delegations and delegates in Madrid are ready. I hope they brought plenty of luggage, because they are going to be at it for a while.

And I hope the Congress is ready, too. Ready to back the President in this great effort at peace—just as we did earlier this year in a time of war. Ready to let him do his job, as President, without the "benefit"—and that is in quotes—of incessant second-guessing, and Monday morning quarterbacking. And without allowing ourselves to become a lobbyist for any side, against our own President, if things do not go quite right.

Mr. President, this is a historic and hopeful day. I know every Senator joins me in congratulating President Bush on the diplomacy which has brought us to this point, and on his fine speech. And I know that every Senator joins me in challenging all of those gathered in Madrid to live up to the critical responsibility that history has placed on them, and to make these talks a success.

STATUS OF THE HIGHWAY BILL AND UNEMPLOYMENT BENEFITS

Mr. DOLE. Mr. President, there are no holds on the Republican side on the so-called highway bill. There was some indication that somebody is holding it on this side, and they cannot go to conference. There are no holds on this side.

Second, I confirm that there have been some preliminary discussions on working out some of the unemployment benefits, something that would be paid for. It does not have to be any

precise plan. Whether it is anybody's plan, if it is paid for, I think it is something we can all look at with some encouragement. And, hopefully, if that can be resolved yet this week, it would be good news for America's unemployed, and I think it would indicate that the President was right when he said, "Send me a bill that you can pay for, and I will be prepared to sign it."

There have been no negotiations to date. There have been a lot of preliminary discussions and small meetings. I do not know the details, but I can indicate that at least there is some hope that this matter may be resolved very quickly.

Mr. President, I thank the Senator from Michigan, and yield the floor.

EXTENSION OF MORNING BUSINESS

Mr. LEVIN. Mr. President, I understand that I have been given 10 minutes, and I ask unanimous consent that I continue to be allowed 10 minutes as in morning business.

Mr. DOLE. I would be happy to yield some of my leader time.

The PRESIDING OFFICER. Morning business will be extended as necessary to provide the Senator from Michigan 10 minutes during morning business.

THE ISSUE OF RACE

Mr. LEVIN. Mr. President, since its founding, our Nation has struggled with the issues of race. Just down the hall from here in the old Supreme Court chamber, Justice Tanney ruled that Dred Scott was not a person within the meaning of our Constitution. We have come a long way since then, but we still have a long way to go.

I live in a city divided by race in a country still bedeviled by racial stereotypes and fears, and people willing to exploit them. Americans watch as Los Angeles cops assault a black American with nightsticks and racial epithets. Marion Barry blames his ills on a racist plot. David Duke inflames racial fears and resentments in his campaign to become a Governor. Al Sharpton is a different kind of opportunist using the same kind of rhetoric. Wielding gasoline and matches, they express shock at the fire and sadness at the ashes, and some people even believe them.

Meanwhile, people of good will struggle to advance the unity of the Nation. The issue we face is how to live together, how to overcome discrimination without discriminating against other Americans, and how to assist the victims of bigotry without creating other victims.

One way we have sought to do that is to distinguish between quotas and affirmative action. Most Americans, of all races, oppose quotas for a number of reasons, not the least of which is that Americans basically oppose privilege and preference. This country was born with a distaste for one person having unearned privileges over another. We are, as a result, as democratic as any country in the world.

But we also are aware that we must correct the continuing after-effects of prejudice and discrimination by reaching out affirmatively to their victims. The balance between acting affirmatively while avoiding preferences is particularly difficult to maintain in tough economic times, when the pie is shrinking and opportunities are fewer for all.

This economic situation is ripe for those who are willing to exploit old racial fears and hatreds for political purposes. David Duke is doing that as we meet today. But anyone who uses race for political gain, even if less crassly than David Duke, helps to foster the atmosphere in which the David Dukes can operate.

I am afraid the earlier debate surrounding this civil rights bill has contributed to that. It helped create the political environment in which a David Duke could prosper. By simplistically labeling the civil rights bill a quota bill, President Bush did a disservice to America. The President now says it is no longer a quota bill. But it never was a quota bill—never. Never. The bill's chief sponsor, Senator DANFORTH, says this new compromise bill is not substantially different from the bill the President called a quota bill.

To listen to the White House, one would have thought this civil rights bill was a quota bill and nothing but. That charge was wrong on two counts.

First, because the bill never provided for quotas. Even its opponents had to acknowledge that. Instead, they argued the bill might lead employers to adopt quotas. But the bill's sponsors never intended it that way and said so publicly and repeatedly. Intent is critical in statutory construction as well as in political affairs. The sponsors explicitly, month after month, said this bill was not intended to produce quotas and in fact was antithetical to quotas.

The second reason the quota charge was wrong was that it ignored the other widely supported civil rights protections in the bill. The disputed language was but one part of the bill whose other provisions are aimed principally at giving ethnic minorities and religious minorities and women the remedies for discrimination which are available to racial minorities.

Why should an Italian-American discriminated against because of his name receive a lesser remedy than a black-American discriminated against because of his race? Why should a Jewish-American discriminated against because of her religion receive less of a remedy than an Asian-American discriminated against because of her race? They should not, and the bill begins to remedy these wrongs.

It also corrects many other injustices in ways that have broad support. For instance, a recent Supreme Court opinion held that the 19th century statute barring employment discrimination applied only to hiring and not to discrimination on the job. This bill overturns that overly narrow interpretation of the law. It will also give women claiming to be discriminated against because of their sex the same right to a jury trial as someone claiming to be discriminated against because of race.

Why then was a bill that had so many such provisions enjoying broad public support wrongly labeled by the White House a quota bill? And why was a bill whose supporters explicitly rejected any intent to allow quotas erroneously labeled as a quota bill? The answer is clear and disturbing: for political gain.

Anyone has a right to express a difference of opinion on an issue. If the President believed one provision of the bill would result in quotas, he had the right to say so. But instead of debating the specific provision, the President labeled the entire bill a quota bill for political purposes. It was the simplistic labeling—quota bill and the constant harping on that label for political gain which was so harmful.

By characterizing the whole bill as a quota bill because of one debatable provision, racial fears and resentments were exploited for political benefit. The decision to use race as a wedge issue is an ugly decision. Some of the President's men saw quotas as a realignment issue. If people believed the Democrats were for quotas, they thought, it might help Republicans. But the Nation pays the price of racial politics. When the race issue which has faced this Nation since its inception is exploited for political purposes, the Nation is hurt. Long after the elections are over, the resentment remains.

A few weeks ago I voted against Clarence Thomas for a number of reasons which I keenly felt. But one of the aspects of his background that appealed to me—and I indicated this at the time—was his willingness, as a conservative, to tell conservative audiences some things they did not want to hear. As much as Thomas opposed both affirmative action and quotas, he warned conservatives against harping on them because of the damage they do to the country. For instance, in a 1988 speech to a conservative organization, Judge Thomas said "Think * * * of the tone you set for the entire community when you ceaselessly attack affirmative action or quotas." Regardless of how one feels about Clarence Thomas, these words ring true.

Most of us learned long ago not to challenge other people's motives and intent. Few of us are pure. But on this issue, we must scrutinize each other's intentions, and even our own. The first rule learned by new doctors is: Do no harm. The first rule that American

politicians of any political party should accept is: Do not use racial fears for political gain. Our leaders must not use the explicit or implicit language or symbols of racial division. When we do, the negative message seeps down to American streets and neighborhoods.

Our President, particularly, must set the tone. I hope that when the President signs this civil rights bill, he will put more than a new law on the books. I hope he will set a new standard for political campaigns. I hope he will make clear that his administration and his campaign will not use racial wedge issues.

I hope he will follow the lead of Republicans like JACK DANFORTH who have courageously warned the country that using race issues politically is an explosive mixture for our Nation and that a party cannot hope to gain at the country's expense.

Our Nation is indeed one nation indivisible. But our people can be divided by demagogues like Al Sharpton and David Duke. We need to bring Americans together. Challenges such as the increasing financial squeeze on middle-class Americans, the loss of jobs to unfair foreign trade practices, crime, poor schools, and unaffordable health care cannot be solved by a divided nation. These problems do not just affect one group in society; they affect us all. And we need to work together to solve them. The solutions are even harder to achieve when divisions are sown purposely for the selfish gain of individuals or factions.

We continue to grope our way to racial harmony and equality. Hard as we try, we make mistakes. We are not always perfectly logical in trying to remedy past injustices, but the effort is surely worth it. We are much stronger as a people when we work to increase our tolerance and respect for each other, to perfect our unique American pluralism, and to reject the efforts of those who would divide us.

I thank the chair, and again I thank the Republican leader, and yield the floor.

JEWISH HERITAGE TOUR

Mr. SPECTER. Mr. President, recently, a group of congregants from the Washington Hebrew Congregation of Washington, DC, ventured on a Jewish heritage tour of Eastern Europe and the Soviet Union. Their purpose was to examine the remnants of Jewish culture and the status of Jewish communities as they confront uncertainty and change in that part of the world.

The welfare of Jewish life in Eastern Europe and the Soviet Union is of a special interest to me because it is a part of my own heritage. My parents came to America from Russia to escape virulent anti-Semitism. My father came here in 1911 from a small village, Batchkurina, fleeing oppression from the czar. My mother came from an area of Russia-Poland—the territory has been traded back and forth—at the age of 5 in hope of a life free of persecution.

I believe it is important that the issue of anti-Semitism and future of Jewish life in Eastern Europe and the Soviet Union be carefully monitored. Although we can rejoice over the demise of communism in the region, it is imperative to remember the nefarious pasts of nationalistic movements in these countries. Accordingly, I am pleased to share the attached letter submitted by Mr. Herb Ascherman which eloquently summarizes the findings of the Jewish heritage factfinding tour and alerts us to the challenges still faced by Jewish communities almost five decades after the Holocaust.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

DEAR SENATOR SPECTER: Thank you for kindly inviting us to share with you our experiences from our recent trip to Eastern Europe and the Soviet Union.

As you know, before World War II, hundreds of Jewish communities existed in the cities and villages of Eastern Europe and the Soviet Union. The Jews of Eastern Europe had their own vernacular language, Yiddish; their own theater, literature, and music. They raised up scholars, artisans and artists of the highest caliber. These communities founded and maintained communal and charitable organizations and religious academies. For generations the Jews of Eastern Europe preserved and transmitted to their children a rich religious heritage and a vibrant culture.

During the Holocaust, all of this changed. Six million Jewish men, women and children were murdered. Hundreds of Jewish communities were completely destroyed. Jewish culture nearly vanished. Only a handful of Jews remain in Poland, Czechoslovakia and Hungary. Of the larger Jewish community in the Soviet Union, thousands have emigrated to the U.S., to Israel, and to other countries.

This past summer, Rabbi Joseph Weinberg of Washington Hebrew Congregation in Washington, D.C., led a small group of his congregants on a Jewish heritage tour of Eastern Europe and the Soviet Union. There we found two disquieting, but related phenomena: the memory of Jewish life in Eastern Europe and of the Holocaust is being systematically erased; and antisemitism continues to exist in these countries, and may grow as the economic and political situation of these countries becomes more difficult.

Poland, in particular, has done little to acknowledge the destruction of its Jewish community in the Holocaust or the complicity of many of its citizens in the Nazi atrocities. At the Auschwitz-Birkenau concentration camp, the movie which introduces the tour of the camp makes no mention of the fact that Birkenau was built specifically for the extermination of Jews. At numerous sites in Poland where Jewish communities were wiped out, the monument, if there was one at all, indicated that "Poles" were killed rather than Jews. Where the Jewish nature of the victims was noted, the complicity of the local population was passed over.

The truth that Jews were killed in the Holocaust because they were Jews is glossed over. Worse, the thousand-year history of Jews in Eastern Europe, the flourishing culture and the many contributions of Eastern European Jews to their countries of residence, is completely ignored. One can walk through towns and villages which had prosperous Jewish communities before the war, and not know that Jews had ever been there.

As Americans, the open existence of antisemitism which we experienced in these countries shocked us. Incredibly, this poison is found most often in the very countries with the fewest Jews, most notably in Poland, where approximately 5,000 Jews remain from a prewar population of 3.3 million. Synagogues are defaced, and valuable religious objects are stolen. Swastikas mar the monument in Warsaw marking the place where Jews were loaded into boxcars for the trip to the concentration camps. Several members of our group were personally confronted with antisemitic remarks or actions during our trip.

For example, when we visited the few remaining remnants of the Warsaw ghetto, located in the midst of a residential district, people came out of their houses to glare at us. Later, in a fine Warsaw restaurant, the pianist entertaining evening diners stopped in the middle of a song at the sight of us and began to play "Hava Nagila", a Jewish folksong. Whispers of "Jude! Jude!" and angry stares followed us to our table.

Our guide at Auschwitz was a very articulate and well-educated young lady. She told us that the Poles "never really liked the Jews, but we didn't want to murder them." In Prague, Czechoslovakia, the thirty-five year old leader of the Jewish Federation asked us to send Hebrew books and history books, and radiated enthusiasm about rebuilding a Jewish community for his young children. When asked privately how he could be so positive about the future in the light of the history of his country, he answered simply, "It can never happen again!" His hope for the future, in the shadow of past hatred and destruction, was very moving.

The Jews still living in those countries, of course, face antisemitism every day. In Poland, one of our guides publicly stated that most Poles tried to help Jews in World War II, in the Warsaw Ghetto, and that there was little antisemitism there today. Privately he told one of our group that he had changed his Jewish name for a Polish one, and he expressed fear for his safety because his great-grandmother was Jewish.

Through our discussions with Jewish community leaders in each country we learned that, while antisemitism exists in all of them, there are differences from place to place. In Poland, the elderly leaders of the Jewish community told us that only age kept them from attempting to leave. However, in Hungary the Jewish community is vital and striving to grow. In Czechoslovakia, there is hope. And in the Soviet Union there is hope mixed with fear. Some of the people we spoke with in the Soviet Union are willing to wait, to see if the emergence of democracy and pluralism would make a viable Jewish community possible. Others are convinced that they must leave in order to give the children the opportunities for higher education and better jobs that are closed to them in Russia.

The tremendous changes that have taken place in Eastern Europe may lead to greater freedom and opportunity for all the citizens of those nations. However, the period of transition is a difficult one. The Jews in Eastern Europe know that historically, times of high unemployment, economic unrest, and political upheaval have led to heightened antisemitism and scapegoating of the Jewish community.

The best way to fight antisemitism, or any bigotry, is through education, through understanding. Without a thorough reconstruction of Jewish memory in Poland, for example, the people of Eastern Europe will never be able to understand what was lost. Nor will they be able to come to terms with their part in its destruction. The most meaningful acknowledgement of the history of Jewish suffering in Eastern Europe, however, is not erecting more memorials to the dead. It is the support of a living Judaism. The Jews of Eastern Europe are now trying to reclaim their heritage and educate themselves about their tradition. The spark of Jewish life in Eastern Europe must be carefully nurtured, and protected from the winds of antisemitism which may sweep that region in this time of change. If it is allowed to die, then Hitler will have won. The loss of this rich religious and cultural heritage would impoverish us all.

Signed:

Herbert Ascherman, Dorothy Ascherman, Rabbi Arik Ascerman, Mr. Paul Mason, Rabbi Einat Ramon, Dr. Robert B. Wagner, Alane Youngentoub, Gene Youngentoub, Dr. Dolph Zeller.

BOSTON'S MAYOR RAY FLYNN

Mr. KENNEDY. Mr. President, the August 26, 1991, issue of City & State magazine contains an impressive article praising Mayor Ray Flynn of Boston for his numerous accomplishments.

Like many other cities, Boston has been confronted over the past decade with numerous economic and social challenges. Mayor Flynn has spent the past 8 years as mayor successfully guiding Boston through these trying times. Much of his success can be attributed to his personal dedication to the people of the city and his perceptive understanding of their needs and aspirations. His roots run deep in Boston, and he is an effective, respected and compassionate leader on the wide range of issues that matter to the people.

Mayor Flynn's outstanding ability and his enduring commitment to public service have been recognized not only by the citizens of Boston, but also by his colleagues in city halls across the country. He currently serves as President of the U.S. Conference of Mayors, where he is an eloquent spokesman for all the Nation's cities.

I believe that all of us in Congress will be interested in this important article on Mayor Flynn, and I ask unanimous consent that it may be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From City & State magazine, Apr. 26, 1991]

WHERE IS FLYNN? HE'S EVERYWHERE!

(By Ellen Perlman)

WASHINGTON.—Looking for Raymond L. Flynn, mayor of Boston?

Don't start at City Hall.

Try the basketball courts at a neighborhood park. Or a hearing room on Capitol Hill. Or a high school.

An Irish pub. The scene of a fire. A marathon. A conference somewhere in the United States.

Since Mr. Flynn, 52, seems capable of functioning on only four to six hours of sleep a night, he has the stamina to go just about everywhere. And so he does.

In June, he was on stage conducting the San Diego Pops, flailing a baton in a stunt that sent gales of laughter through a crowd of mayors gathered for their annual meeting.

In early August he was in Hyannis, Mass., with a group of mayors planning a march on Washington. They seek to prevent federal cuts of urban and children's programs.

This fall in particular, he needs all the hours the days and nights offer. He is carrying out dual roles: president of the U.S. Conference of Mayors and two-term mayor of Boston on the re-election trail.

His popularity remains high among most of Boston's electorate, and observers say it is unlikely he'll be defeated in the fall election.

Mr. Flynn is running on his eight-year record. When his administration took charge in 1984, he set out to end a 10-year series of budget deficits. He has produced a balanced budget for the last six years.

The mayor is credited with easing racial tensions in the city, integrating public housing, getting developers to contribute to housing for the homeless as a condition for building, and elevating the city's bond rating from one of the lowest in the country to a relatively healthy. A by two major rating agencies. That means five upgrades in six years.

"He has done an excellent job of managing the city's resources," said J. Chester Johnson, president of Government Finance Associates Inc., financial advisers to Boston and other cities and counties.

"Overall, he's done a good job," agreed Samuel R. Tyler, executive director of the Boston Municipal Research Bureau, a business-supported watchdog agency. "In the earlier years it was easier to do that. Lately, it's been tougher, but he's made the decisions necessary to maintain a surplus."

More recently, he took on reform of the public school system.

"Public education is in a shambles," the mayor said. "The school system has failed the kids."

Few in the city disagree that the current school board has created an environment fraught with racial tension and internal bickering. But many were against Mr. Flynn's drive to change to a seven-member board appointed by the mayor from a 15-member elected body.

"If there is going to be true education reform, (board members) can't just be 'yes' people for the mayor, they can't just be an extension of the mayor's City Hall family," said Joyce Ferrisbough, president of the Black Political Task Force, a 13-year-old political action group.

Some say the mayor's desire for an appointed school board was a power play good for beefing up his resume. But others say he must be sincere about reform. Otherwise, he'd be crazy to take on the high-risk responsibility for what has been an intractable problem.

"It's something other mayors in the past have not wanted to do," Mr. Tyler said. "He's willing to be held accountable."

"People said it was a power grab," agreed Ellen Guiney, the mayor's education adviser, "but it's very risky and I admire him for it."

The general public, minorities, state legislators—all will be scrutinizing Mr. Flynn's actions as well as the school board's performance.

So why, Ray?

He said he couldn't stomach the deterioration anymore: "If we don't succeed, I'm going to be severely criticized, no question about it. The easiest thing in the world is to turn around, walk away and see the school system continue to fail. I couldn't do that any longer."

School board members simply were issuing their positions as stepping stones to higher political offices, said Mr. Flynn, who has a master's degree in education from Harvard University in Cambridge, Mass.

Ms. Guiney suggests a more personal reason for tackling the problem.

SON OF A LONGSHOREMAN

The son of a longshoreman father and scrubwoman mother, Mr. Flynn deeply believes education gives poor children opportunities. He carries that concern to the national arena. One of two new committees created under his direction at the U.S. Conference of Mayors is aimed at education and family. The other deals with communications.

Conference members are thrilled to have such a high-visibility, indefatigable advocate for cities as president of their group, particularly in the year leading up to a presidential election.

"He'll breathe fire into this organization," maintained Mike Brown, conference spokesman.

He hasn't wasted much time, either. The conference dispatched a Flynn-signed letter to President George Bush Aug. 4 asking for the opportunity "to brief you" on the cities' priorities. The mayors want urban issues highlighted on the presidential campaign trail.

"We can't allow candidates for president every four years to give the so-called urban agenda pitch and walk away, never to hear from them again," Mr. Flynn said.

But the mayors said the same thing during the 1988 presidential campaign, to no avail. Willie Horton eclipsed the debate on urban issues. The electorate chose a president whose forte is foreign affairs.

In the ensuing years, city problems have escalated.

Mr. Flynn talks wistfully of the days of yore when powerful mayors such as New York's John V. Lindsay and Chicago's Richard J. Daley carried clout in Washington—clout that needs to be revived.

"When they spoke, their voices were listened to and usually responded to with support from federal officials on down. The mayors' goal is to make sure strong voices for urban America cannot be ignored," Mr. Flynn said.

HEAVY ON THE NATIONAL SCENE

Even before he stepped into the conference's presidential role, the mayor was in overdrive on the national scene. He made trip after trip in Washington to castigate members of Congress for not doing enough for the cities on drugs, homelessness, crime, jobs, education.

When everyone else's workday ends, the former Providence College basketball star from Irish Catholic South Boston often can be found on a bar stool hoisting a Guiness with the working man or singing melancholy Irish ballads by the piano into the night.

He's also familiar with the dawn, when he has been known to run the quiet streets and find a different shift of constituents to converse with.

This very public officeholder has been praised and condemned for his affinity for press coverage.

"Mr. Flynn, as we know, is a media kind of mayor. He attracts the national press," said J. Thomas Cochran, executive director of the U.S. Conference of Mayors.

That tendency can be a powerful tool for getting out the organization's and the major's agenda.

But the local media, at least, often are irked if they get drawn into what they call publicity ploys—such as when the major turns up at the scene of a fire and helps pull people out of buildings while cameras click.

They've called him "media-hungry," accused him of pursuing the press "like a heat-seeking missile," claimed he has toiled over the weekends to generate news coverage for a Monday (usually a slow news day).

Democratic Councilman Tom M. Menino laughs at the criticism.

"Ray Flynn has probably the best political instincts in the city," he said.

Few in city politics question the mayor's concern for Boston and its residents. Most praise his financial management of a city that, granted, went through boom years and high growth but has maintained its financial balance even as the economy has soured in recent years and state aid has vaporized.

The mayor has made some tough choices. He directed, for instance, that youth programs be spared the budget ax while some administrative departments were cut more than 20%.

Along the way, he has brought his constituency into the process, spelling out that effective financial management will save Boston, not rampant spending and not preservation of every program, said Mr. Johnson.

When the revenue runs out, the spending stops according to mayoral directive.

"I don't know how many times I've heard him say, 'I won't spend money I don't have," remarked Barbara S. Gottschalk, director of the budget and program evaluation office.

Mr. Flynn's administration has been commended for establishing an office of capital planning and producing a five-year capital plan. He has had business leaders conduct a review of city government management.

In the mid-1980s, the city has put into place a performance-based management review system. Reports on departments' effectiveness come out quarterly and annually.

Of the 1,428 criteria evaluated in fiscal 1990, about 65% "met or exceeded the promised level of service," according to the most recent annual report.

Mr. Tyler said such accountability is something not many cities have. He hopes Boston government will further the effort with even stronger measurement standards.

DEALING WITH URBAN WOES

Like any big-city mayor, Mr. Flynn still has plenty of urban ailments to deal with—crime, a police force frequently in trouble, racial tension that endures, poor schools, and persistent drug, hunger and homelessness problems. But by most measures, Boston has come a long way under Mr. Flynn's leadership.

In June, he tantalized the press with the notion that some mayor or other should run for president and then suggested he wouldn't be the worst qualified.

He has since backed off, since dallying with presidential politics may not be the wisest thing they do so close to a mayoral election.

Besides, he'd have to get up pretty early in the morning to visit all the neighborhoods in America.

Yet, with all that energy, several political observers warn not to count Mr. Flynn out of the national political scene. It's obvious that the hoop-shooting marathoner out of blue-collar Boston is tempted to go for the glory.

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,419th day that Terry Anderson has been held captive in Lebanon.

TRIBUTE TO DR. HATTIE BESSENT FOR 16 YEARS OF PLACING MINORITY NURSE INTERNS ON CAPITOL HILL

Mr. INOUYE Mr. President, I rise in tribute today to Hattie Bessent, Ed.D, R.N., deputy executive director of the Ethnic and Racial Minority Fellowship Programs at the American Nurses' Association [ANA].

As the director of the ANA's Minority Fellowship Programs, which assist nurses working on their doctorates in mental health disciplines, Dr. Bessent has successfully negotiated for approximately $3.5 million to sustain two important fellowship programs.

Speaking of Dr. Bessent's work, Dean Gloria Smith of the Wayne State University School of Nursing has said that "Dr. Bessent is a visionary who has used her extraordinary talents to create an outstanding legacy for minority nurses. Through her work, she has developed a cadre of highly qualified specialists and researchers in mental health and the behavioral sciences who are particularly dedicated to working with ethnic racial minority populations and communities." Dr. Bessent's programs have assisted more than 225 nurses from the Asian, black, Native American, and Hispanic communities. Funds provided by the ANA Minority Fellowship Programs enabled the minority nurses to receive doctoral training in the behavioral sciences and in clinical psychiatric nursing programs.

Dr. Bessent's efforts have been far-reaching and extensive. She is often called upon by her colleagues in the university academy, for her expertise in administrative issues, research and methodology trends, and in developing minority content in nursing curricula. She serves the academy and minority nurse fellows in another vital way by recruiting potential faculty for schools of nursing and for the 50 State nursing associations. When funds were available, she also helped nurses working on their baccalaureate and master's degrees in a variety of nursing specialties.

Dr. Bessent's accomplishments to date have been most impressive. Her work for the ANA's Fellowship Programs began in 1977 with two Federal grants; since then she has received approximately $3.56 million from the National Institute of Mental Health for periodic renewals of the grants program. In late 1983, the ANA Baccalaureate Completion Scholarship Fund was established as a 5-year initiative and placed under the aegis of the Minority Nurse Fellowship Programs.

Dr. Bessent has also obtained considerable financial support for her fellowship programs from the private sector. For example, in both 1985 and 1988, the W.K. Kellogg Foundation approved 3-year grants to provide leadership training for minority women in mental health-related fields. In 1985 Dr. Bessent also assumed directorship of the Allstate Nursing Scholarship for American Indian and Alaska Natives, which previously had been administered by the American Indian/Alaska Native Nurses' Association. The Allstate Foundation has been funding the program since 1975.

Presently, Dr. Bessent is administering three grant programs funded by both the private and public sectors, all of which support and further the education advancement of our Nation's minority communities.

Mr. President, since 1975, 225 black, Native American, Asian, Hispanic, and Native Hawaiian nurses have received fellowship support through ANA programs for their doctoral training in the behavioral sciences and clinical psychiatric nursing. They have matriculated at more than 50 institutions of higher learning across our Nation, including schools in Hawaii and Puerto Rico. Further, 125 of the nurses have earned doctorates and are actively teaching, conducting research, and providing clinical services for our Nation's minority populations.

One of Dr. Bessent's finest accomplishments has been the development of the Minority Legislative Fellowship Programs on Capitol Hill. Since 1977, the Legislative Internship Program has given 57 minority nurses a firsthand experience in understanding the relationship between our Federal health care policies and the political process.

The innovative Legislative Internship Program allows the participants to directly observe the relationship between our Federal health care policies and the political process. They are prepared to be involved actively in the legislative process as individuals and as members of various nursing organizations.

My office has hosted a number of minority nurse interns, and I can attest that the individuals selected by Dr. Bessent have consistently demonstrated enthusiasm, professionalism, and outstanding leadership capabilities. They have contributed important insights into the value of our Nation's Federal health policies to those who are most in need. As many of us know, Dr. Bessent works tirelessly with agencies to give her interns a full appreciation of the legislative and administrative processes. Dr. Bessent's students are a tribute to her own compassion and dedication.

Hattie's activities are not limited to Capitol Hill nor to the Federal Government. She also participates in numerous site visits to nearly 50 universities

across the Nation where her nurse fellows have been enrolled. Her site visits have in turn served as recruiting trips for new applicants and provided her with opportunities to consult on such diverse topics as minority content in nursing curriculums, administration and management curriculums, assertiveness training, and the importance of networking and mentoring. She also provides an important job placement service, identifying prospective employees for a wide range of accredited schools of nursing and the 50 State Nurses' Associations, and publishes four monographs, and a newsletter publicizing the successes of the Minority Fellowship Program. The newsletter and monographs are sent to all accredited schools of nursing throughout the country.

Dr. Bessent is a highly respected leader in the fields of psychiatric nursing and educational psychology. As an educator, she has lectured on cultural aspects of the delivery of mental health services, and conducted research in the mental health aspects of the development of young children in longitudinal studies. She has taught diverse courses in the mental health of the young, personality development, approaches to mental health therapy, curriculum development and nursing research. She has also participated in numerous conferences addressing the delivery of mental health services to minority patients and discussing nursing and minority cultures.

Further, Dr. Bessent has accomplished a series of firsts for herself, for people of her race, and for her profession. She was the first black nurse to head a hospital psychiatric unit in her hometown; the first black person to work at Vero Beach Hospital as a laboratory and x-ray technician; the first black person in the South to receive a Federal career teachers grant; the first black nurse in Florida to receive a doctorate; the first black person to receive a diploma as a mental health consultant from Tulane University; and the first black nurse in the South to receive a fellowship from the American Council on Education for an administrative internship.

Dr. Bessent was the first black nurse in the South to be inducted as a member of Phi Delta Kappa; Sigma Theta Tau, for nurses; Phi Lambda Theta, for educators, and Phi Delta Kappa. Dr. Bessent is also a member of Delta Sigma Theta Sorority. She was the first black woman and nurse to become a faculty member of the University of Florida at Gainesville; the first black woman to receive tenure in the Florida State University system; and the first black person to become dean of the Graduate School of Nursing at Vanderbilt University.

She was appointed by President Carter as the only black member of the Presidential Task Force for a Friendship Treaty to China, and served as the only black nurse on the Presidential Commission on Mental Health. She was also invited to participate in conferences in New Zealand and Egypt where she presented papers discussing her work on homelessness and runaway youth. Today she is the only black professional nurse deputy executive director on the staff of the American Nurses' Association.

Among her other honors are the Meritorious Distinguished Alumna Award, the highest award given an alumnus, from Florida A&M University in 1980, which also awarded her the first honorary doctorate it had ever conferred on a woman. Dr. Bessent is listed in "Who's Who Among Black Americans," and "Contemporary Minority Leaders in Nursing." He latest article, "Postdoctoral Leadership Training for Women of Color" was published in the September-October, 1989 issue of the Journal of Professional Nursing.

In citing the work of Dr. Bessent, Dr. Beverly Malone, a former minority fellow and current dean of North Carolina's Agricultural and Technical State University School of Nursing says, "Dr. Bessent creates an environment that facilitates and supports the strengths of minority nurses. She is a humanitarian, an able administrator, and an incredible fundraiser. She is a fighting spirit with a clear sense of mission, whose work has broken many barriers and made the nursing profession a broader and more diverse place for many people to stand." She has dedicated her entire professional life to assisting others, be it patients, families, or nurses.

Mr. President, I am pleased today to honor Dr. Hattie Bessent and her minority fellowship recipients and to commend Dr. Bessent's sincere efforts on behalf of our Nation's citizens. She has been an outstanding role model for both her professional colleagues and for future generations of minority students. She has displayed impressive expertise and knowledge of the legislative process and demonstrated the positive long-term consequences of being actively involved in the political process. Her legislative internships have enabled many leaders of tomorrow to assist actively in bettering the health care of our citizens. Very few can match her accomplishments and dedication.

RESURRECTING THE MIDDLE EAST PEACE PROCESS

Mr. LEAHY. Mr. President, the peace treaty signed by Egypt and Israel 13 years ago was a historic event, and an act of great political courage. President Carter staked his personal reputation on the success or failure of those negotiations, as did President Sadat and Prime Minister Begin. Despite great opposition within their own countries, they embraced a unique opportunity for peace that had long eluded them.

History recounts how fleeting these opportunities are, and how often they are lost for lack of courage or initiative, lost perhaps forever.

The Middle East peace conference is one of these historic times.

Despite our great hopes and expectations, the Camp David accords did not signal the beginning of a comprehensive peace between Arabs and Israelis. Over the years the Middle East peace process has come to represent little more than the memory of Camp David. The intifada was the latest manifestation of how little peace was left in the process.

Suddenly, all of that has changed. The Soviet Union is no longer a super power. Iraq's military might has been crippled, as has the myth of Arab unity. Regional conflicts around the globe are ending. And this week, Arabs and Israelis will take the first tentative step toward each other across a bridge spanning a chasm formed by half a century of hatred and distrust.

President Bush and President Gorbachev have opened the Middle East Peace Conference in Madrid, culminating a marathon effort in diplomacy by Secretary Baker. It is a historic opportunity for solving what is unquestionably the most dangerous regional conflict of all. The outcome of this Conference has enormous stakes for the entire world.

President Bush and Secretary Baker deserve to be commended for their skillful diplomacy and their stubborn perseverance in overcoming obstacle after obstacle to reach this point. Now, it is up to Israel and the Arab parties themselves to take advantage of an opportunity so hard won and so easily lost.

Mr. President, the Middle East is a safer place today because of the military defeat of Iraq. But it is all too clear that Iraq's defeat did not bring peace to the Middle East.

It would be unforgivable if after the United States sent half a million men and women into war to defeat Iraq, and after all the dramatic changes in the world that have created this opportunity for peace, we and the Arabs and Israelis did not do everything possible to get a constructive dialog started which might lead to real peace.

That is why I supported delaying action on the Israeli loan guarantee issue. President Bush said he needed to defer debate on that issue to make this historic Peace Conference possible. Congress heeded his request.

Our expectations must be kept at a realistic level. If this process is to succeed, it will be long and arduous, requiring patience and determination from all participants. We cannot become so discouraged that we abandon this cause, for this chance may not

come again in our lifetime. It is important that we persevere.

The formal Conference will be difficult. That is to be expected. Each side will restate extreme positions, that are as familiar to us today as they have proved irreconcilable in the past. But the real test will be whether the parties can proceed to discussion of underlying interests. Face to face negotiations with the Arab parties has been sought by Israel for more than 40 years, with United States encouragement and backing.

As Prime Minister Shamir said, "we have to begin because * * * without negotiations, we will never get peace."

My best wishes go to President Bush, to Secretary Baker, to Prime Minister Shamir, and all the other participants in the Peace Conference. All sides have shown restraint just in getting this far. They must keep in their minds a larger vision of what peace—real peace—could mean to this region.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

CIVIL RIGHTS ACT OF 1991

The ACTING PRESIDENT pro tempore. Under the previous order the Senate will resume consideration of S. 1745, which the clerk will report.

The bill clerk read as follows:

A bill (S. 1745) to amend the Civil Rights Act of 1964 to strengthen and improve Federal civil rights laws, to provide for damages in cases of intentional employment discrimination, to clarify provisions regarding disparate impact actions, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

(1) Danforth/Kennedy amendment No. 1274, in the nature of a substitute.

(2) Grassley modified amendment No. 1287 (to amendment No. 1274), to establish the Office of Senate Fair Employment Practices in order to protect the right of Senate employees, with respect to Senate employment, to be free of discrimination on the basis of race, color, religion, sex, national origin, age or disability.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from New Hampshire is recognized for purposes of offering an amendment. There will be 30 minutes of debate equally divided and controlled in the normal form.

The Senator from New Hampshire.

Mr. RUDMAN. Mr. President, I thank the Chair.

I believe it would be proper to wait until the managers have arrived rather than do this in their absence.

I make a parliamentary inquiry. If I should declare the absence of a quorum, will we still have 30 minutes equally divided from the time the debate starts?

The ACTING PRESIDENT pro tempore. There will be 30 minutes equally divided when the debate commences, which will occur at such time as the Senator offers the amendment.

Mr. RUDMAN. I thank the Chair.

In light of that, I think it would be good to have the managers and possibly the majority leader here, so I will suggest the absence of a quorum.

Mr. ROBB. Mr. President, will the Senator withhold?

Mr. RUDMAN. I withhold.

Mr. ROBB. Mr. President, if not out of order at this point, I would like to address the Senate on the bill itself in the absence of the managers before we get started on the amendment to be offered by the Senator from New Hampshire.

Mr. RUDMAN. Mr. President, I certainly have no objection to that. The majority leader has set the order up for 12 o'clock. Obviously, people are not quite ready. I do not know how long the Senator desires to speak, but I have no objection.

The ACTING PRESIDENT pro tempore. Without objection, the Senator from Virginia is recognized.

Mr. ROBB. Thank you, Mr. President, and I thank my friend and colleague from New Hampshire.

Mr. President, I rise in support of the Civil Rights Act of 1991. I am, of course, pleased that the President has now agreed to support the bill, that he has now acknowledged that the bill does not require quotas. I am glad that we have been spared a repeat of last year's acrimonious debate. And I am pleased that we will not have to go another year with remedies for employment discrimination severely weakened.

Sadly, those remedies are still needed. Great challenges still face religious, racial, and ethnic minorities and women in our society. Human nature has not yet advanced to the point at which individuals are measured by their humanity and not their gender or skin color. Achieving such a society requires the full measure of intellectual creativity and resources of every Member of this body and, indeed, all Americans.

That is why it is especially unfortunate that the President and the Congress have been distracted from that challenge by the fuss over this one relatively modest bill. For all of the heat generated by the bill, it is not a breakthrough; indeed, it is largely restorative in nature. This act restores the civil rights remedies which were taken away in the late 1980's by the new majority on the Supreme Court, and it gives to women, religious minorities, and the disabled the right to sue for damages when they have been intentionally discriminated against.

The President's current position on the bill, while certainly welcome, merely confirms what most informed observers of the debate knew all along—and that is that quotas were largely irrelevant. Any legitimate concerns about quotas were resolved, in my view, before the civil rights bill ever reached the floor of the Senate. In fact, if I thought the Civil Rights Act was really a quota bill, I would have strongly opposed it because I believe that mathematical formulas are counterproductive and demeaning.

I hope that the stake has been driven through the quota issue once and for all. It arose because opponents didn't like a bill which increased the number eligible for damages, but they simply couldn't come out and defend a system with the existing inequities. So they began talking more and more about quotas. They took an issue of employment law, which is fundamentally an issue of employers versus employees, and turned it into an issue of worker against worker. An issue involving employee suits against employers was twisted into an issue of black workers taking the jobs of white workers. And in doing so, opponents found an issue that worked politically.

Mr. President, even the House's addition of language explicitly forbidding quotas wasn't enough to placate those opponents, and much of the American public to this day thinks the proponents of this bill are trying to push quotas.

So where did this quota argument come from? It came out of a section of the bill which involves so-called disparate impact cases. These cases are brought when an employer hires disproportionate numbers of white or male applicants from the qualified applicant pool. In the landmark case of Griggs versus Duke Power, a unanimous Supreme Court found that the civil rights laws prohibited employer practices which had the effect of discriminating and were not justified by business necessity. Under Griggs, an employer's requirement that employees have a high school diploma to shovel coal, a practice which disproportionately screened out black applicants, was struck down as unrelated to business necessity. Griggs, then, had nothing to do with giving minority groups preferential treatment; it had to do with removing discriminatory barriers which were unrelated to job performance.

This act seeks to lift an unreasonable burden from the backs of women, religious minorities, and the disabled. In 1989, the Supreme Court unilaterally disposed of 18 years of case law when it overturned Griggs in the case of Wards Cove Packing versus Atonio, and shifted the burden to employees of proving that discriminatory practices are not significantly related to a legitimate business objective. Clearly, that burden is virtually impossible to meet.

There has been something of a consensus from the beginning that we

needed to return to the old Griggs standard. That is to say, when a disparate impact is shown, and an employment practice can be identified as responsible for that impact, the burden shifts to the employer to show why the employment practice is justified by business necessity.

The problem was that Griggs was not a tightly written opinion. It contained at least six different articulations of the "business necessity" standard. So the opponents chose the definition most favorable to employers; the proponents adopted the one most favorable to employees. When the civil rights bill was first introduced in February 1990, it was argued—plausibly, in my judgment—that the standard adopted did more than merely restore Griggs and was so tough that a few employers might throw up their hands and resort to quotas in order to avoid litigation.

But that problem was dealt with in May of 1990 when I joined Senator DANFORTH and several other Senators in suggesting to Senator KENNEDY language which sought to restore the Griggs standard. Senator KENNEDY agreed to make the changes, and long before the bill even hit the Senate floor, the legitimate quota issue was resolved.

Why, then, was such a flap created about quotas? In part, because the quota bill charge was accepted by the media as a focus of debate without examination of its accuracy. As commentator Michael Kinsley has pointed out, "Not one television or newspaper discussion in 20 on the quotas controversy has troubled to point out that Bush's alternative bill would also shift the burden of proof to the employers." Nor is it often pointed out that the Griggs decision, which was the law for almost two decades, placed the burden of proof on the employer.

A perfect illustration of the problem appeared in this morning's Washington Post. In an op-ed column entitled, "It Was a Surrender to Quotas," Rowland Evans and Robert Novak make the same mistake many others have made. They say: "Exposure of up to $300,000 in damages will require employers to avoid lawsuits by establishing quotas for racial minorities."

Well this just isn't accurate. First of all, the damages section applies to individual cases of intentional discrimination—where the statistical makeup of the workforce is irrelevant. Second, even if damages were somehow linked to quotas, that would argue that the bill would result in quotas for women, the disabled, and religious minorities, not racial minorities, as stated in the column. Racial minorities may sue for unlimited damages now, with or without this bill.

When the issue is so racially charged as quotas, we have an even greater responsibility to get the basic facts right.

In a sense, the President and Congress have been in heated agreement about the problem we were trying to solve. And the heat was generated by the emphasis on differences between our plans rather than the broad commonalities, on argument rather than agreement, and on partisanship rather than policy.

The underlying substantive debate, all along, was not about disparate impact or quotas but about damages in cases of intentional discrimination. Should women be allowed to sue employers in cases of intentional discrimination, the way minorities currently can? That prospect is what had employers up in arms. Not quotas, but damages. I happen to support giving women, disabled Americans, and religious minorities the same scope of remedies available to those who suffer racial discrimination, and will support such subsequent legislation when it is offered. The current hierarchy of remedies simply makes no sense. Under existing law, a black woman can sue for damages for racial discrimination, but if she suffers gender discrimination, she's out of luck. Discrimination is wrong, and is not more or less so depending upon the demographics of its victim.

Earlier this month, the public's consciousness was raised dramatically on the issue of sexual harassment. To the extent that anything good came of that unfortunate episode, it was that with the help of Senators WIRTH and MIKULSKI and others, the focus returned to the true essence of the bill: Whether women, religious minorities, and disabled Americans should be treated equally under the law. And, now, we have a bill. It is not a perfect bill by any means. It does not give women equal remedies. But it moves in the right direction, and the divisive language of quotas is, at least for the moment, behind us.

The passage of this legislation is important: It strikes out at discrimination in meaningful ways. But clearly, greater challenges lie ahead. We're going to have to be able to capitalize on the new willingness of both sides to move forward, to mount what Martin Luther King called the second phase of the civil rights revolution, which unites people of all colors and empowers them to realize their full human potential.

This bill is a springboard to greater achievements. It is not an end; it is but a beginning upon the long road to a society in which people are defined not by gender or race, but solely on their capabilities. I look forward to working with Senators KENNEDY, HATCH, DANFORTH, WIRTH, MUKULSKI, and others in going forth with this important task.

Mr. President, I thank you. I thank my colleague from New Hampshire for allowing me this particular time.

I yield the floor.

If no current Senator is seeking recognition, I suggest the absence of a quorum.

Mr. RUDMAN. Will the Senator withhold?

Mr. ROBB. The Senator does withhold.

The PRESIDING OFFICER (Mr. GORE). The Senator from New Hampshire is recognized.

Mr. RUDMAN. Mr. President, it is my understanding, under the previous order, we will now have 30 minutes for debate on the amendment which I am about to offer.

The PRESIDING OFFICER. The Senator is correct.

Mr. RUDMAN. I have checked with the majority leader and it is his wish that we proceed. Senator DANFORTH, I see, is on the floor. Senator GRASSLEY, who is on the floor, is a cosponsor of the amendment now pending.

AMENDMENT NO. 1290 TO AMENDMENT NO. 1287

(Purpose: To require the President or a Member of the Senate to reimburse the appropriate Federal account for any payment made on their behalf out of such account for an unfair employment practice judgment committed under the provisions of this title by the President or Member of the Senate not later than 60 days after the payment is made)

Mr. RUDMAN. So, with that, Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from New Hampshire [Mr. RUDMAN] proposes an amendment numbered 1290 to amendment No. 1287.

At the end of the pending amendment, add the following:

SEC. . PAYMENTS BY THE PRESIDENT OR A MEMBER OF THE SENATE.

The President or a Member of the Senate shall reimburse the appropriate Federal account for any payment made on their behalf out of such account for an unfair employment practice judgment committed under the provisions of this title by the President or Member of the Senate not later than 60 days after the payment is made.

Mr. RUDMAN. Mr. President, before I address this particular amendment, in light of the very interesting and full debate of the underlying constitutional issue, this morning I would just like to read into the RECORD from the Federalist, Madison No. 51, the following statement:

* * * In order to lay a due foundation for that separate and distinct exercise of the different powers of government, which to a certain extent is admitted on all hands to be essential to the preservation of liberty, it is evident that each department should have a will of its own; and consequently should be so constituted that the members of each should have as little agency as possible in the appointment of the members of others. * * * It is equally evident that the members of each department should be as little dependent as possible on those of the others for the emoluments annexed to their offices. * * * But the great security against a grad-

ual concentration of the several powers in the same department consists of giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others. The provision for defense must in this, as in all other cases, be made commensurate to the danger of the attack.

No one has ever said it better and no one ever will, on the doctrine of separation of powers and particularly as we are concerned with the speech and debate clause.

My amendment is a very simple amendment. It provides that the President and Members of this body shall reimburse the Federal Government for any payments made to an individual where the President or the Senator was found guilty of engaging in discrimination or sexual harassment. If the President or a Member of this body discriminates against someone on the basis of race or sex or engages in sexual harassment, should the American taxpayer be forced to pay the tab? That is the issue before us. The underlying Grassley-Mitchell amendment, although it attempts to put Members of the Senate and the President in the same position as the average taxpayer, nonetheless fails by requiring the final bill to be paid by the taxpayer.

Last night the majority leader argued that the pending amendment may be unconstitutional, and I assume he was referring to the immunity clauses of the Constitution. But, of course, the underlying amendment is obviously unconstitutional, so, at very best, it is a matter of degree. I would say that the real question is, if we are going to roll the dice on this constitutional question as I expect we are going to, should we roll the dice at the taxpayers' expense or should we roll the dice at our own expense? This amendment ensures that we roll the dice on our own expense.

Last night, in an exchange with my distinguished friend from Maine, the majority leader, he mentioned the fact that companies pay damage awards, not individuals. Of course, that is a neat shorthand, but it just defies practicality. In my State, as I suspect in his and most of our States, many businesses are sole proprietorships, small family corporations, small partnerships employing a few hundred people or less. And if there is a judgment it comes out of the pocket of the owners of that business. As a matter of fact, if a judgment were held against a major U.S. corporation, it eventually comes out of the pockets of the owners; that is, the stockholders. So, obviously, to say that if a Member of this body is involved in discriminating against a person because of gender, national origin, or age, that somehow the taxpayer should reimburse us for our misdeeds and mischief defies any logic.

Of course, the argument was also made that when the head of a Federal agency is sued with a successful outcome by plaintiff, then, in that event, the Federal Government pays. That is true. But, of course, if the Secretary of Defense is named in an action because of something that some subordinate did, 20,000 people removed from the Secretary, it is unlikely and it just does not happen that the Secretary is aware of the event complained of, and, thus, the Federal Government properly pays the resulting judgment.

Let me make it clear that in this amendment if a staff member or a committee director or one of the supervisors of the various service departments discriminates, then the Federal Government will, in fact, pay. That is the corporate model. But if a Member of the Senate is guilty of discrimination over the small number of people that we employ, then we in fact should be liable. I hope that this amendment serves the interests of making sure that we truly have some leverage here, and that we are really going to attempt to obey these laws. The best way to obey these laws is to have the threat out there that, if you do not obey the laws, it is your pocketbook that will reimburse plaintiff, not that of the already overburdened American taxpayer.

Mr. President, how much time do I have left?

The PRESIDING OFFICER. The Senator from New Hampshire has 9 minutes remaining; 15 minutes in opposition will be controlled by the majority leader.

Mr. RUDMAN. I thank the Chair and I presently yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. RUDMAN. I yield 5 minutes to my distinguished colleague from Maine.

The PRESIDING OFFICER. The distinguished senior Senator from Maine.

Mr. RUDMAN. I am surrounded by my colleagues from Maine this morning.

Mr. COHEN. Mr. President, a journalist turned novelist, Allen Drury, wrote some years ago:

(T)he Senators of the United States, so human, so certain and so confused, so noble and so petty, so statesmanlike and so expedient, so wonderfully representative of their own human, likeable, certain, confused, noble, petty, statesmanlike, expedient country, will of necessity play a great and vital part. That they and their colleagues in the House will play it as the country would is certain, for here on the Hill, in a way that is the wonder and strength of America, they are the country.

He was writing about a time and place which may no longer reflect the country. We are supposed to mirror the people that we represent. And yet, according to the polls that were cited by my colleague and friend from New Hampshire last evening, that no longer seems to be the case. There is great discontent in this land. There is great anger and frustration because people see their dreams evaporating. They see the chance for their children to have a better opportunity for the future disappearing and they see their prosperity shrinking.

Part of that is due to the perception of what takes place here in Washington, the check-kiting, the restaurant tabs over in the House, the Thomas hearings here in the Senate. They are symbols of something that the American people feel has gone terribly wrong.

Basically, I think, it is because we in public office from the Presidency to the House of Representatives, and perhaps even down to the State level, have not been honest with the American people. We have held out false promises. We have told them that they could prosper while plundering their savings, they could achieve success without discipline and sacrifice, and all we needed to do was to take the shackles off the entrepreneurs in this country, to deregulate our economy. Let the economic Darwinian forces loose from the Government cages and all would be well.

And, what we have witnessed has been the S&L scandal, the Ivan Boeskys, the Mike Milkens, and others, who have walked away with millions while we prayed at the altar of mammon. Now we are in dire economic straits, and we are not sure there is a way out. There is, of course, but it is one that is going to come with pain and sacrifice and the deferral of gratification, and the restoration of a sense of a commonweal or the common good. But that is going to require that we level with the American people and we deal with them candidly and no more campaign spins and that we let them, above all, know that we are in this ship of state that is taking on water right along with them.

That brings me to the point of accountability. The purpose of the amendment offered by my colleague from New Hampshire is to establish accountability. Under the amendment as written, there is no penalty imposed on a Member who engages in wrongdoing. It is another form of congressional immunity, as such. So, for us to stand here in the Senate saying we are finally going to take action which reduces this privileged palace to ordinary human dimensions, that makes every Member of the Senate and the President subject to the same rules and regulations, obligations, and responsibilities that the average American businessman and businesswoman is subject to, is simply not accurate. It is not accurate and it is not a fair representation. Because, if we engage in wrongdoing, if we discriminate based upon race or sex or some other factors, if we engage in harassment, we do not have to pay. We just send the bill to Uncle Sam.

Now, that is something I think the American people will not see as an hon-

est attempt to reduce office holders to a level of equality.

So, if we are going to attempt to tell the American people we are with them, that we are going to remove privileges, that we are not going to act in a way that is inconsistent with the rules and obligations that they have to respond to, it seems to me we have to insist that when we do wrong we have to be held accountable in a fashion comparable to that of the average citizen.

There is no equal accountability under the Grassley amendment as written. Perhaps political accountability, in that if we were to engage in such conduct, the voters would throw us out of office the next time. But that seems to me to be little consolation to the American people for us to say that if a judgment is awarded—be it $50,000, $100,000, $150,000—to just send the bill to Nicholas Brady and he will take care of it, and dock the American people for the costs.

I hope that my colleagues will join the Senator from New Hampshire and support this amendment.

The PRESIDING OFFICER. The Senator's time has expired. Who yields time?

Mr. MITCHELL. Mr. President, I yield myself such time as I may use. Does the Senator from Iowa want some time? I will yield 5 minutes to the Senator from Iowa now.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I rise in opposition to this amendment. I think it is a very difficult amendment to speak against from the standpoint of the way the Senator from New Hampshire approaches it, because he wants to make it look like we are being inconsistent.

The Senator from Maine just spoke about consistency, asserting that there will not be any accountability. What is very important about our amendment, Mr. President, the Grassley-Mitchell amendment, is that we are totally consistent—totally consistent. That is the basis of the amendment: that employees of the Senate who are harmed will receive fairness and equity as employees of the Federal Government, the same treatment employees in the Defense Department or employees in any other department of our Government receive.

The Grassley-Mitchell compromise is designed to ensure that employees of the Senate who have their civil rights violated have the same remedies for that discrimination as employees in the Federal sector and the private sector. There is not some new approach carved out in our legislation just to protect Senators or to treat us differently than any other people in a like situation in the Federal Government.

These remedies of Government employees that I speak of include the right to secure and to collect judgments against their employing institution for acts of discrimination by officers or fellow employees of the institution. Employees of the Senate should have rights equivalent to employees in the Federal sector and the private sector who are already covered by title VII. An employee of the Federal sector who is discriminated against by a fellow officer of the Federal Government has, under existing law and under the language of the pending bill, a cause of action against the employing institution—an agency or an arm of the Federal Government. When a person wins a money judgment against any Federal agency, the judgment is paid out of the Federal Treasury. The United States Code has specific provisions for the appropriation of necessary amounts from the Treasury in these cases where there has been discrimination for awards, settlements, interest, and costs assessed against an employee of the Federal Government.

On this issue, I see no reason why the Senate should be treated any differently than any other arm of the Government of the United States. So from that standpoint, I tell the senior Senator from Maine, there is total consistency on the part of our amendment. Employees must be assured, Mr. President, of the certainty of their ability to collect a judgment against their employer in the event they are damaged by an employer in violation of a law. Consequently, the Grassley-Mitchell compromise tracks the existing civil rights laws in allowing judgments against the Senate for acts of its employees which violate the civil rights laws and then allowing the payment to be appropriated from the Treasury.

It may be that a disproportionate number of the Members of the Senate are blessed with the financial means to pay large damage awards. That is not true of all Members of the Senate. It is not true of most officers and employees of the Senate. It is not true of most people who are employed anywhere in the Federal Government who could likewise have a charge of discrimination filed against them. To ensure that victims of discrimination within the Senate have the same ability to be compensated for their losses as employees in the Federal and private sector, we must grant these employees the right to recover.

As my colleagues know, I am not a Senator who is quick to reach into the Federal purse and spend the taxpayers' money. I do not believe that allowing employees of the Senate to collect judgments from the Treasury for discriminatory acts against them by individual Senators will place a significant burden on the public fisc. Perhaps the proponents of the Rudman amendment expect individual Senators to be successfully sued for discriminatory employment practices on a regular basis. I think it is more likely to be a rare occurrence, because I am confident that Senators currently conduct themselves in conformity with the law, and I know they will continue to do so.

If there really is a problem with allowing money judgments to be collected against the Senate, than perhaps we should question the wisdom of allowing actions for money damages generally. The pending bill significantly expands the availability of money damages, compensatory and punitive, as a remedy for violations of the civil rights laws. It would allow plaintiffs to collect judgments from the Treasury for discriminatory acts by officers and employees of the Federal Government. If a Senator is truly concerned about the burden on the taxpayer, I urge him to abrogate the liability of the taxpayers for discriminatory conduct throughout the Federal Government, not just in the Senate,

The fact is, Mr. President, that the taxpayers always bear the costs of discrimination. They may bear the cost through the expenditure of public funds in payment of a judgment against the United States, or in increased prices of the products of private defendants who are financially exposed to judgments under the civil rights laws. If we enact compensatory and punitive damages as a remedy for violations of the civil rights laws, we are effectively concluding that the cost of discrimination should be primarily borne by the party most capable of keeping such conduct from recurring. In order to ensure that the Senate is an institution devoid of discrimination, we must require the Senate to pay for any discrimination it tolerates on the part of its Members, officers, or employees. I urge my colleagues to protect the rights of employees of the Senate by voting against this amendment

The PRESIDING OFFICER. The Senator's time has expired. Who yields time?

Mr. RUDMAN. How much time would the Senator like?

Mr. CHAFEE. Two minutes.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. CHAFEE. Mr. President, I rise in support of the amendment of the distinguished Senator from New Hampshire. Let us just take an example. Let us say there is a gender discrimination case that is brought by a woman complainant or a sexual harassment case. She brings her complaint. She goes through the steps and is awarded compensatory damages. She collects from the Federal Government. There is no waiting around for her. She collects.

That was one of the points that was raised last night: Should she have to wait until the Senator comes up with the money? No. She collects. She collects from the Federal Government.

The point we are discussing now is whether the Senator who is judged directly responsible should reimburse the

Federal Government. This is different. But the distinguished majority leader last night made a splendid case, as he always does. He is extremely persuasive, and he pointed out that we are proceeding in a different fashion, and he did not want to hear any further talk about being exactly like the private sector. So we accept that.

In other words, in a way this is the Mitchell amendment, if I might say. I am not sure he would agree with that. So we are providing here that the Senator who is responsible, and indeed he has to be directly responsible, reimburses the Federal Government. What is the matter with that? Should the taxpayers pay for the transgressions of a Senator? Of course not. And those who vote against the amendment of the distinguished Senator from New Hampshire are saying let the taxpayers pay the burden.

I might say, we are not exactly an underprivileged class around here. Last I knew, everybody was getting paid $125,000 a year. So we are not picking on some poor, penniless Senator.

So, Mr. President, I do hope—I know my time has expired—I do hope all my colleagues will support this very worthwhile amendment.

The PRESIDING OFFICER. The Senator's time has expired. The majority leader.

Mr. MITCHELL. Mr. President, this amendment can be summed up in two words. It is a poison pill amendment, poison pill intended to kill the underlying amendment and to have no provisions affecting Senators or Senate employees.

The Senator from New Hampshire has been very open, very aggressive, very persuasive in his arguments against any efforts to subject Senators or Senate employees to this type of provision. Having failed to have it declared unconstitutional, he now comes up with an amendment which will be politically embarrassing for a Senator to vote against in the hopes that he can so burden this provision with an unpalatable amendment that the Senate will then vote the whole provision down.

I understand, accept, and respect his position, but I say to my other colleagues who spoke who, with such piety, have told us why we have to get the Senators involved, this is the height of inconsistency, the height of inconsistency to say you are going to support this amendment because you want more coverage for Senators when the obvious purpose of this amendment is to kill any coverage for Senators. That is what this is. It is being offered by the same Senator who told us last night that there should not be any coverage; that it was unconstitutional. Having failed in that effort, now he comes forward with a poison pill.

And we have Senators here saying they are for more coverage for Senators when the whole objective of this is to have no coverage for Senators. I think if the American people can see through anything they can see through this transparency.

Second, Mr. President, we are told that there is no accountability. Well, section 219 of this Grassley-Mitchell amendment reaffirms rule XLII of the Standing Rules of the Senate. A Senator found guilty may be expelled from the Senate. That possibility exists. A Senator may be censured. A Senator may be subject to other disciplinary action. I say that is accountability. Are Senators here unconcerned about the possibility of being censured, or punished, or expelled from the Senate? Is that not something of accountability? I think it is. I respectfully disagree.

Third, this amendment, according to the Senator from New Hampshire himself, sets up two completely different standards. If the Senator is the subject of the action, he or she must repay any judgment. If any other Senate employee is the subject of such action, he or she need not. And but for the president every single member of the executive branch is permitted to have the Government make the payment and is not required to reimburse it.

Well, if it is good for the Senators and the President, why is not it good for everybody else? Why the double standard? We have heard a lot of talk about treating everybody the same. Yet we now heard an argument in favor of creating a double standard.

Now, Mr. President, let us be clear on this. Most of these cases involve back pay. That is what we are dealing with. Back pay, pay that is already paid by the Government. An American citizen listening to this debate might think that the Senator from New Hampshire, the Senator from Maine, and the Senator from Rhode Island pay their staffs themselves. Everybody knows they do not do that. The Government pays their staffs. And so if the Government is paying their staffs, and an action involves back pay of a person, what is wrong with the Government making that payment? We have yet to hear that. Perhaps these Senators in their zeal to be treated in a certain way will now volunteer.

Mr. COHEN. Will the Senator yield?

Mr. MITCHELL. They will now volunteer to pay their own staff salaries and thereby relieve the taxpayers of that burden. That is the logical extension of the argument being made here, and they can demonstrate that this is not just rhetoric; they are serious about this. They are going to pay their staff salaries. Just as they do not want the Government to pay if there is back pay, they can pay their staff salaries now.

Is the Senator rising to volunteer?

Mr. COHEN. Will the Senator yield? What I want to ask the Senator, my friend, does the Government pay for harassment of an employee? While the Senator confined it simply to back pay, this includes also the prospect of harassment. I do not think it is fair for Senators to say, well, let us just stick the taxpayer with the bill for a judgment for sexual harassment.

Mr. MITCHELL. And as we all know the overwhelming majority of suits brought under these laws have been back pay suits. Harassment suits are a rarity, so we ought not to be legislating on the rarity and ignoring the rule.

Mr. COHEN. That may very well change.

Mr. MITCHELL. Now, Mr. President, I have a couple more points I would like to make.

First off, let us make it clear that with respect to the private sector, title VII provisions of the 1964 Civil Rights Act prohibiting discrimination do not apply to companies with 15 employees. The Americans With Disabilities Act provisions do not apply to companies employing less than 25 persons. So all of this talk about how somebody out there in the private sector is going to get stuck with this, pay it himself, if the Senators are having the Government do it, it does not apply to the majority of companies because they are exempted from the provision of these laws based upon size.

Mr. President, I am going to repeat—I want to reserve a little bit of time to close—I want to repeat, this is obvious. This is a poison pill amendment. A Senator who does not want any coverage of Senators whatsoever, a Senator who wants to accept the argument made by the Senator from New Hampshire last evening that there should not be any coverage of Senators whatsoever, ought to vote for this amendment because that is the purpose of this.

It is plainly and obviously intended to defeat the majority effort and to have no coverage of Senators whatsoever. And that is the point of view that as a rationale, a force of argument—and in fact 22 Senators voted with the Senator from New Hampshire last night—those 22 Senators would be consistent in voting for this amendment. But those Senators who profess to want Senate coverage and who make all these statements about it ought to be more and then vote for this amendment, they are in fact saying one thing and doing another, because this is an effort, clear, unmistakable, to kill the underlying provision, to accomplish today what the Senator from New Hampshire could not accomplish last night.

I respect him for his openness about this. He does not want this provision. He has said no. But that is different from the other arguments which have been made which have not been to kill the thing but somehow to improve it. This is the kind of improvement that

will produce a corpse of this provision, and that is what Senator GRASSLEY and I do not want.

Mr. President, I reserve the remainder of my time.

Mr. RUDMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. RUDMAN. I compliment the esteemed majority leader. I knew him as a Federal judge. I knew him as a U.S. Federal District Attorney. He has demonstrated advocacy of a remarkable fashion, because I do not think he really believes what he just said. And I say that with respect.

Mr. MITCHELL. That kind of respect I can use less of.

Mr. RUDMAN. Mr. President, let me just make a couple of points. Obviously, the majority leader understands that the Senate is presently covered by all of these bills. We have a process. My amendment is a new way to handle it. And my objection has never been to having these rights available.

My objection is a very narrow one, and one which someday soon will be constitutionally upheld I believe, and that is that we ought not to have cases go to Federal courts. That is my only argument with this. The rest of this is fine. We ought to do exactly what was in one of the original proposals with all of the in-house appeals, judgments, and so forth.

There is no question in my mind that that is the position that is held by many here, although I would say that there has been some concern expressed.

Finally, I would only make this observation. It is true that I want this to fall constitutionally. The majority leader is absolutely correct. There is no question that my amendment might aid in doing that. I agree with him. And that certainly, as I said in my statement, was one of my reasons for offering it.

But my overriding reason for offering it is simply this. If we are going to roll the dice constitutionally, let us roll it on our own pocketbooks. Let us not roll it on the taxpayer's. That is why I am offering it. It will either rise or fall. But if it should rise, then I believe we should be in error. I thank the Chair.

The PRESIDING OFFICER. The Senator's time has expired.

The majority leader has 2 minutes 20 seconds.

Mr. MITCHELL. Mr. President, I have 2 minutes left. Although I am reluctant to do so because of the incisiveness of his argument in opposition to me, I will yield 30 seconds to the Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I thank the majority leader.

I just want to say once again he has demonstrated this extraordinary ability to present a brilliant case on behalf of terrible facts and situation.

Let me just say, he has characterized this as a poison pen. I voted against the Rudman amendment last evening. I want to see something take place, but I want to see something fair take place, and I do not think the taxpayers should bear the freight.

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Mr. President, it is a poison pill amendment. The author has acknowledged he does not want this thing to pass. Those are not my words; those are his. So, if a Senator votes for this, he is voting to kill any provision as contained in the Grassley-Mitchell amendment. It is not often that the author of the amendment and the principal opponent agree on that. So if the Senator from Rhode Island casts a vote for this amendment, he is in effect saying he does not want any coverage for Senators.

That is what the vote is saying.

Mr. CHAFEE. That is the way the Senator characterized it.

Mr. MITCHELL. As opposed to what the speech is saying because that is the obvious intent, it is the stated intent, it is the acknowledged intent of the author of the amendment.

Mr. President, I just want to repeat, we have a very serious problem. We are trying to accomplish coverage of Senators and their employees to provide protection for the employees similar to that accorded to other persons under law and to do it in a manner consistent with the Constitution.

Now, obviously this is a middle ground. Senator RUDMAN is coming at this provision from one side. As soon as we dispose of this amendment, Senator NICKLES is going to come at it from the other side. We are seeing an effort to defeat this coverage from both sides. I say, Mr. President, that the best thing we can do is to adopt the Grassley-Mitchell amendment.

It is fair and responsible way to deal with the serious problem. It provides protection to the employees in a manner that is consistent with the Constitution.

I will say that any Senator who votes for this amendment is saying by that vote that he or she does not want any coverage of Senate employees, period. He is trying to kill it. And he will kill it if this is adopted.

I urge my colleagues not to adopt the amendment.

Mr. DURENBERGER. Mr. President, I oppose the amendment that extends the liability for violations of our civil rights laws to individual Senators. I think it is an unprincipled amendment that constitutes bad policy, and therefore, I urge my colleagues to vote against it.

The Rudman amendment, which is a second degree amendment to the Grassley civil rights congressional coverage amendment, makes individual Senators liable for violations of our civil rights laws. Under the Rudman proposal, a Senator that intentionally discriminates against a Senate employee would be personally liable to that employee.

Because the underlying Grassley amendment provides for compensatory damages, as well as traditional title VII remedies such as back pay, the Rudman proposal is far reaching, indeed. And it results in a truly ironic outcome where Senators will be required to live up to responsibilities that we do not impose on the private sector.

The Grassley amendment is designed to require the U.S. Congress to live by the same civil rights laws that the rest of the country must live with. I have stated time and again that I support efforts to make Congress comply with legislation that applies to the private sector, and that is why I am cosponsoring the Grassley initiative.

But in the private sector, supervisors, managers, principals, and coworkers are almost never personally liable for their discriminatory conduct in the workplace. Instead, persons forming a business incorporate under the laws of the State where the business is located. The result is that victim of discrimination sue their corporations, and not individual supervisors.

Mr. President, under the Rudman amendment, we would expose individual Senators to liability, even though Senate staffers are U.S. Government employees—Senate employees. Senators do not pay the salaries of Senate staffers, and Senators should not be considered the employers of Senate staffers.

I will vote against this amendment, and urge my colleagues to join me.

Mr. WOFFORD. Mr. President, as I indicated last night in my statement on the amendment of the Senator from Oklahoma, I feel strongly that if an individual Senator violates our civil rights laws, the money to right that wrong should not come out of the pocket of the American public. I strongly object to the provision in the amendment offered by the distinguished majority leader and the Senator from Iowa which says that if a Senate employee sues for employment discrimination and wins, the taxpayers may foot the bill.

I support the amendment of the Senator from New Hampshire.

Mr. WARNER. Mr. President, late last evening, I actively participated in the debate of the issues raised by Senator RUDMAN as objections to Senator GRASSLEY's amendment. While I support the Grassley amendment, I was concerned by the provision which would have imposed a financial risk on the taxpayers to foot the bill for monetary damage awards adjudicated against a Senator who is found, after due process, to have violated the law. And further, what would happen in the event an injured party, who prevails in

establishing entitlement to damages, is unable to collect should a Senator be financially insolvent

Senator RUDMAN has modified his amendment to directly address my concerns. Senator RUDMAN'S amendment now ensures that a prevailing injured party will be able to collect an adjudicated claim.

Mr. MITCHELL. I suggest the absence of a quorum, Mr. President.

The PRESIDING OFFICER (Mr. ADAMS). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, I move to lay the Rudman amendment on the table. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Iowa to lay on the table the amendment (No. 1290) offered by the Senator from New Hampshire to amendment No. 1287.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Iowa [Mr. HARKIN], the Senator from Nebraska [Mr. KERREY], and the Senator from Pennsylvania [Mr. WOFFORD] are necessarily absent.

The result was announced—yeas 22, nays 75, as follows:

[Rollcall Vote No. 236 Leg.]

YEAS—22

Akaka	Grassley	Mitchell
Boren	Hatfield	Nunn
Bradley	Inouye	Pryor
Burdick	Johnston	Sarbanes
Cochran	Kennedy	Sasser
Cranston	Lautenberg	Simon
Durenberger	Lieberman	
Gore	Lott	

NAYS—75

Adams	Dole	McCain
Baucus	Domenici	McConnell
Bentsen	Exon	Metzenbaum
Biden	Ford	Mikulski
Bingaman	Fowler	Moynihan
Bond	Garn	Murkowski
Breaux	Glenn	Nickles
Brown	Gorton	Packwood
Bryan	Graham	Pell
Bumpers	Gramm	Pressler
Burns	Hatch	Reid
Byrd	Heflin	Riegle
Chafee	Helms	Robb
Coats	Hollings	Rockefeller
Cohen	Jeffords	Roth
Conrad	Kassebaum	Rudman
Craig	Kasten	Sanford
D'Amato	Kerry	Seymour
Danforth	Kohl	Shelby
Daschle	Leahy	Simpson
DeConcini	Levin	Smith
Dixon	Lugar	Specter
Dodd	Mack	Stevens
Symms	Wallop	Wellstone
Thurmond	Warner	Wirth

NOT VOTING—3

Harkin	Kerrey	Wofford

So the motion to lay on the table the amendment (No. 1290) was rejected.

AMENDMENT NO. 1290 TO AMENDMENT NO. 1287

The PRESIDING OFFICER. The question now occurs upon the amendment of Senator RUDMAN.

AMENDMENT NO. 1290, AS MODIFIED

Mr. RUDMAN. Mr. President, before final action on this amendment, I have discussed this with the majority leader and with the distinguished Senator from Iowa. One of the Members of the Senate made a very good suggestion on grammar in this amendment. And if the parties would like to look at line 6 of the amendment, it says "made on their behalf."

I have a modification here which inserts the words "made on his or her behalf," which makes it much more specific in nature.

I ask unanimous consent that I be allowed to modify the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is so modified.

The amendment (No. 1290), as modified, is as follows:

At the end of the pending amendment, add the following:

SEC. . PAYMENTS BY THE PRESIDENT OR A MEMBER OF THE SENATE.

The President or a Member of the Senate shall reimburse the appropriate Federal account for any payment made on his or her behalf out of such account for an unfair employment practice judgment committed under the provisions of this title by the President or Member of the Senate not later than 60 days after the payment is made.

Mr. RUDMAN. I thank the Chair.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified, of the Senator from New Hampshire [Mr. RUDMAN].

The amendment (No. 1290), as modified, was agreed to.

The PRESIDING OFFICER. Under the previous order of the Senate, the Senator from Oklahoma [Mr. NICKLES] is recognized to offer an amendment.

AMENDMENT NO. 1291 TO AMENDMENT NO. 1287

(Purpose: To allow employees of the United States Senate to have access to jury trials and punitive damages on the same basis as such rights and remedies are available to employees in the private sector)

Mr. NICKLES. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Oklahoma [Mr. NICKLES], for himself and Mr. SPECTER, proposes an amendment numbered 1291 to amendment No. 1287.

Mr. NICKLES. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(a) on page 14, line 9, after "compensatory" add "or punitive";

(b) on page 14, beginning on line 19, strike "The hearing board shall have no authority to award punitive damages.";

(c) on page 14, line 21, redesignate subsection "(i)" as subsection "(j)" and insert after subsection "(h)" the following new subsection:

"(i) Notwithstanding any other provision of this act, a Senate employee may be awarded punitive damages on the same terms and conditions as such damages may be awarded to an aggrieved individual in the private sector.";

(d) on page 17, beginning on line 5, strike all of paragraph (3); and

(e) on page 17, beginning on line 13, strike all through page 19, line 3, and insert the following in lieu thereof:

"SEC. 209. CIVIL ACTION BY EMPLOYEE OR APPLICANT FOR EMPLOYMENT FOR REDRESS OF GRIEVANCES; TIME FOR BRINGING OF ACTION.

"(a) Within thirty days of receipt of the decision of a hearing board, or of the Select Committee on Ethics (or such other entity as the Senate may designate) upon an appeal from a decision or order of a hearing board, on a complaint of discrimination based on race, color, religion, sex, national origin, age, handicap or disability, brought pursuant to this title, or after one hundred and eighty days from the filing of a formal complaint with the Office or the notice of appeal with the Select Committee on Ethics (or such other entity as the Senate may designate) upon an appeal from a decision or order of a hearing board until such time as final action may be taken by the hearing board, an employee or applicant for employment, if aggrieved by the final disposition of his or her complaint, or by the failure to take final action on his or her complaint, may file a civil action as provided in 42 U.S.C. 2000e–5, in which civil action the Senate or an employing authority of the Senate that employs the employee shall be the defendant.

"(b) The provisions of 42 U.S.C. 2000e–5(f)(3)–(5), 2003e–5(g), 2000e–5(h), and 2000e–5(j), as applicable, shall govern civil actions brought hereunder. The remedies and jury trial rights made available to private complainants and executive branch employees under section 5 of this Act shall be equally available to any Senate employee bringing an action under this section.

"(c) Notwithstanding any other provision of this act, in a civil action a Senate employee or an executive branch employee may be awarded punitive damages on the same terms and conditions as such damages may be awarded to an aggrieved individual in the private sector.".

The PRESIDING OFFICER. The Senator from Oklahoma is recognized, and under the previous order, the time allocated is 30 minutes equally divided between the Senator from Oklahoma and the designee or the majority leader, at his preference.

The Senator from Oklahoma is recognized for up to 15 minutes to dispose of his amendment.

Mr. NICKLES. Mr. President, the amendment that I offer this morning on behalf of myself and Senator SPECTER would fill a couple of voids where under the amendment that we have before us by Senator MITCHELL and Senator GRASSLEY. The Mitchell-Grassley

amendment exempts Congress from two vital sections of the underlying bill. If we pass this amendment we will have exempted the Senate from jury trials, and we will have exempted the Senate from punitive damages.

I asked the question, Why, last night, in debate, and frankly, I do not think we were really given a good answer. I will ask that question again later. But I might start this debate by again looking at the Federalist Papers, No. 57 written by James Madison.

I heard my colleague, Senator RUDMAN, today quoting the Federalist Papers, issues 1 and 2, dealing with separation of powers also written by James Madison. I will read. He said, talking about the House of Representatives:

* * * restraining them from oppressive measures, that they can make no law which will not have its full operation on themselves and their friends, as well as on the great mass of society. This has always been deemed one of the strongest bonds by which human policy can connect the rulers and the people together. It creates between them that communion of interests and sympathy of sentiments of which few governments have furnished examples; but without which every government degenerates into tyranny. If it be asked, what is to restrain the House of Representatives from making legal discriminations in favor of themselves and a particular class of society?

He goes on and says:

I answer: the genius of the whole system; the nature of just and constitutional laws; and, above all, the vigilant and manly spirit which actuates the people of America—a spirit which nourishes freedom, and in return is nourished by it.

If this spirit shall ever be so far debased as to tolerate a law not obligatory on the legislature, as well as on the people, the people will be prepared to tolerate anything but liberty.

In other words, it is Madison who not only talked about separation of powers, but also said it is inconceivable that the Congress would pass a law on the people, the masses, and exclude themselves.

Mr. President, last night I had an amendment that would have included several laws that Congress has excluded itself from for decades. Some people believed my amendment was reaching too far. My good friend and colleague Senator HATCH said my amendment should be taken care of on another bill or another vehicle. I understand that. I understand the concerns of some people that this might enter into some areas that might hurt the compromise.

But now we are talking about the civil rights bill that we have before us. The bill does a couple of things in the private sector that the Mitchell-Grassley amendment does provide for the Senate. It says under title VII that cases of unintentional discrimination are going to be decided by jury trials. We have not had jury trials in title VII cases before in the private sector in America. We do now under this compromise bill, but we do not for the Senate. And I might mention, as drafted, the Mitchell-Grassley amendment does not do it for the executive branch either. The executive branch agreed they should be covered and so should we. I will submit a letter for the record from the White House on this subject. If jury trials expansion is such a needed benefit we should have it apply to the Senate as well as on the private sector.

Also, the amendment that we have before us provides for compensatory damages for employees of the Senate, but it does not provide for punitive damages. As my colleagues are aware from the debate that has transpired over the last several days, if not the last 2 years, one of the big debates was whether or not we are going to have jury trials for these discrimination cases and whether or not we are going to have punitive damages.

I will just compliment the majority leader, who insisted on the expansion and was successful. So now the private sector is going to be subjected to jury trials. They are going to be subjected to punitive damages. Well, if they are, why are we not?

Why in the world do you want to pick up a headline tomorrow that says the Senate exempts itself again? Because that is exactly what we are doing.

Some people have said, the Senate did not exempt itself. We have judicial review in the Mitchell-Grassley amendment which goes directly to the circuit court of appeals. However, it bypasses the district court, the lower level court. Therefore, it bypasses jury trials and forbids punitive damages. My amendment would correct that inequity.

I do not go in and rewrite the structure. The mechanisms of the Mitchell-Grassley proposal prior to judicial review remain the same. My amendment only applies to the Senate and administration similar to the Mitchell-Grassley amendment. I do not touch the House, as some people have mentioned. However, I believe the Congress as a whole should live under it.

But I have tried to make my amendment applicable to the amendment before us. There is no constitutional argument that can be raised against this amendment. Several of my colleagues raised the constitutional argument last night, I think quite incorrectly so. They attempted to expand the speech and debate clause to say that the Congress is exempt from any laws that it passes. This is not what Madison says; that is not what the Constitution says. And that is not constitutional. And, frankly, I believe it is inappropriate to raise it now because, in the amendment that is offered by Senator MITCHELL and Senator GRASSLEY, there is judicial review.

I have judicial review, except I seek to provide the same judicial review for the Senate that the bill provides for the rest of the private sector. A judicial review that individuals may go to the district court, have trial by jury, and be awarded punitive damages if they succeed. That is what the rest of America is going to have under title VII. If that is so good for the rest of America, let us have it apply to the Senate as well. And if punitive damages are good for the business community then they should be good for the Senate.

And so, again, I compliment my friend and colleague, Senator GRASSLEY, because he has fought for the right of full judicial review. He did not get all that he sought in the negotiations. The majority leader mentioned there is a lot of give and take. Unfortunately, this was given. And so the rest of the Nation will have jury trials and punitive damages in cases of intentional discrimination but the Senate will not.

So if we do not pass my amendment, we are saying the Senate again is above the law. The Senate will be covered by the same law. We are not going to have the same procedures and remedies as everybody else. I have not attempted to change the internal enforcement mechanism through the hearing review panel and the Ethics Committee. I am simply ensuring that a complainant in the Senate has the same right to go to a district court and have a jury trial just like every other American instead of just to the appellate court for review. I think that is only fair. I do not think the Senate should exempt itself as we have done under the so-called Mitchell-Grassley amendment.

Mr. President, I reserve the remainder of my time.

Mr. MITCHELL. Mr. President, I yield 3 minutes to Senator DOLE.

Mr. DOLE. Mr. President, just let me address this issue as I understand it. I do not quarrel with the distinguished Senator from Oklahoma. I know the effort he has made and will continue to make on this issue. I do not think this will be the last debate on how we ought to be covered, how broad we ought to be covered, and under what rules we ought to be covered.

But the facts are, in this particular case, these issues were addressed and an agreement was reached between the majority leader and the distinguished Senator from Iowa [Mr. GRASSLEY]. And many of us, on the basis of that modification, who had some questions about the original Grassley approach, said, "OK, I will support the Grassley approach, as modified by the distinguished Senator from Maine, Senator MITCHELL." That is precisely where we are.

I am not going to debate the merits or demerits of the arguments of the Senator from Oklahoma, because I think he makes some good points. But we did make an agreement here just

last night. Just last night we made an agreement. And now we want to change the agreement. We want to go back and say, well, we did not mean what we voted on last night even though we all understood what Senator MITCHELL and Senator GRASSLEY had in mind. Senator GRASSLEY gave up some things he did not want to give up. He backed away from a couple of things. But in the final analysis, my view is the Grassley amendment, as modified, will pass by a wide margin.

And, so, without quarreling with my friend from Oklahoma, Senator NICKLES, I just say we have made an agreement. We are going to revisit this issue. This is not the last time we are going to talk about coverage of Congress. I see this amendment as something that has already been talked about. We have already had a discussion of it. We have agreed that we are going to support the Grassley amendment, as modified, and that is precisely where the Republican leader comes from. So I am going to vote against the amendment of the Senator from Oklahoma.

Mr. MITCHELL. I yield 3 minutes to the Senator from Utah.

Mr. HATCH. Mr. President, I understand what is going on here. Many Members of this body get a little bit tired of us imposing what really have been onerous and burdensome laws on everybody else but ourselves. I think that is a concern that needs to be articulated around here.

But I will tell you what I am concerned about more than anything else. We have fought this battle for 2 years. We finally have a bill that I think has a broad consensus on the floor. It is going to be a monumental civil rights bill that is going to do a lot of good for a lot of people and, for the first time, protect women in this society in the cases of sexual harassment. And I have to say that these amendments break the deal.

Now, I happen to agree with the distinguished Senator. I still think it may be unconstitutional, but I happen to agree with what the distinguished Senator from Oklahoma is trying to do. But I will be honest with you. It may break the deal and it may put the civil rights bill down. Now, that is what I am concerned about.

And I think there is a higher goal here. Yes, it is difficult to justify why the Congress has to exempt itself from these laws. On the other hand, this is a political body, and the people out there who are subject to these laws are not political people. They do not have people at their heels every step of the way in this society. And they do not have to deal with a lot of the dirty things that go on in politics. But, we have taken a major step in the Grassley amendment in covering the Senate, with a right of judicial appeal to the Federal appellate courts. That represents a compromise. And that is why this amendment does break the deal. It may very well cause us the loss of this bill, which for the first time in the history of this country provides a Federal civil right to women to recover damages for harassment.

Now, to me, that is a higher goal, that is a higher aim. It is what we ought to do. And even though I may agree with the distinguished Senator from Oklahoma in part on what he is trying to do—and I was the one who started all this back in the committee. I said, if we are going to impose this on everybody else, we ought to impose it on ourselves. But the more I get into it and the more I recognize our responsibility, the more I recognize the bill itself is in jeopardy. And I do not want to kill this bill after all the time and effort and pain that everybody on both sides have been through and the good faith efforts that we have gone through.

This bill is important. It is not only important because it resolves 2 years of conflict and difficulty, it is important because it is right.

I do not agree with every aspect of the bill, but it is a very fine compromise under the circumstances. And I ask my colleagues to vote against this amendment because I think we have to defeat it or I think there is a deal breaker here that I cannot tolerate because I made the deal along with others. And I have worked as hard as anybody could possibly work, not just myself but all of us who have brought this deal to pass. And it is right. It is the right thing to do.

I ask my colleagues to vote against this amendment.

The PRESIDING OFFICER. The time remaining to the Senator has expired.

Mr. MITCHELL. Mr. President I yield 2 minutes to the Senator from Iowa.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I rise in opposition to the amendment suggested by the Senator from Oklahoma. During these negotiations, there were two very important principles that I sought in similar legislation over the last 3 years that I wanted to maintain, and they are maintained in this compromise. Anybody who supports this compromise but still thinks well of the efforts of Senator NICKLES does not have to take a back seat to anybody else. We are sticking by the basic principles that are elementary to what we are trying to accomplish here.

No. 1 was that there be no exemptions as far as Senate employees are concerned. Everybody is covered. That is the case with this amendment.

The second one, the one that the Nickles amendment deals with, is a principle that I wanted to establish—access to the courthouse for an aggrieved party. Why? Because access to the courthouse is one of those ways that we ensure fairness. The impartial arbiter of the judiciary should be present as a remedy for Senate employees who may be treated unfairly.

I know there are several ways of getting fairness through the courthouse, and the Senator from Oklahoma suggests one of those, one that I backed originally. But it is not the only way of getting fairness. We have that in the Grassley-Mitchell compromise through an appeal process to the Federal circuit court.

I hope my friends who are supporting this amendment, my compromise, will realize we have not compromised that basic principle of judicial review. If the amendment of the Senator from Oklahoma is adopted, this will be in jeopardy. So I hope my colleagues will support the compromise and vote against the Nickles amendment.

The PRESIDING OFFICER. The time of the Senator has expired. Who yields time?

If no one yields time, the time is charged equally to both sides.

The Senator from Oklahoma.

Mr. NICKLES. Mr. President, how much time is remaining?

The PRESIDING OFFICER. The Senator from Oklahoma has 6 minutes and 50 seconds. The majority leader has 7 minutes and 30 seconds. Time continues to run.

Mr. NICKLES. Mr. President, let me just address a couple of things very briefly in response to some of the comments made by some of my colleagues. I heard somebody say they have questions on the constitutionality. Frankly, my amendment is just as constitutional as the Mitchell-Grassley amendment. Both have judicial review. There is no question about my amendment being unconstitutional as compared to the Mitchell-Grassley amendment. It is just as constitutional, and I happen to think both of them are constitutional.

Again, those people who are trying to draw, in the speech and debate clause by saying that Congress should be immune from any legislation they pass are totally wrong.

Yes, we have the freedom to speak on the floor, we have the freedom to legislate, but that does not mean we should be exempt from legislation. We happen to have other laws that pertain to us, like paying taxes. I think we have other laws, that should also apply to Congress. We should not be exempt. That is exactly what Madison said in the Federalist Papers, No. 57; who also talked about separation of powers. So there is no constitutional argument on this amendment.

I have heard my colleagues say the bill will be in jeopardy if we pass this amendment. Why, because we put Congress under jury trials and punitive damages just like the rest of the country?

Mr. FORD. The Senate.

Mr. NICKLES. The Senator is correct, because my amendment would put

the Senate under jury trials and put the Senate liable for punitive damages? We did that for the rest of the country. Why would that jeopardize this bill? what about the employer who is trying to survive?

I read where the company, Upjohn, just lost $127 million before a jury. Most of that was punitive damages. We say we have caps on punitive damages. But I have heard a lot of Senators say next year they are going to come up with an amendment and take the cap off punitive damages.

That is why this amendment needs to be agreed to because a lot of my colleagues seem to think there is no cost to litigation. If we do not agree to this amendment, colleagues can remove a cap on punitive damages without any thought. Why have a cap?

Maybe, if it applies to the Senate, we will realize there is a potential liability there. And so we need to have this amendment apply to the Senate just like it applies to the private sector.

The Mitchell-Grassley amendment has compensatory damages in it. Why not have punitive damages in it? There is no reason not to have punitive damages in it? There is no reason not to have punitive damages and, since we have judicial review, there is no reason in the world why we would not allow our employees to have a jury trial and punitive damages, just like all other Americans. There is no reason to exempt the Senate in these two areas.

Mr. FORD addressed the Chair.

Mr. NICKLES. No reason whatsoever.

Mr. FORD. Will the Senator yield for a question?

Mr. NICKLES. I will not yield. I am almost out of time. I inquire how much time I have.

The PRESIDING OFFICER. Three minutes and twelve seconds.

Mr. FORD. May I have 12 seconds to ask you a question?

Mr. NICKLES. If the Senator will withhold, Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time? The Senator from Oklahoma has 3 minutes; the majority leader has 7 minutes. Time is running equally.

The Senator from Oklahoma has 2 minutes remaining.

Mr. NICKLES. Mr. President, I heard the majority leader state last night that my amendment was the most unconstitutional thing he has seen. I would just like to inform him, under Chief Justice Burger, Justice Powell, and now-Chief Justice Rehnquist said the "Congress could, of course, make * * * remedies available to its staff employees—and to other congressional employees—but has not done so."

We have the right. We have the capability to make these laws apply to the Senate. The Constitution does not prohibit us in any way, shape, or form from having these laws apply to the Senate.

The major changes that are made under the compromise civil rights bill that we have before us today are jury trials and punitive damages. That is what a lot of people have been opposing this bill for, because they said if we have jury trials and we have punitive damages we will be encouraging litigation—a lot of litigation. I do not want to encourage litigation. I also do not want any discrimination. And I want people who are guilty of discrimination to be punished. But I do not want a lot of frivolous lawsuits in the process and I do not know what the exact result will be, but my guess is it is going to be a lot of litigation, because of jury trials and because of punitive damages.

And if that is the result, let us make sure Congress is included so people will realize at least we have to live under the same laws. If jury trials encourage litigation, let us put ourselves in the same basket as everybody else in America.

And if punitive damages are onerous, let us make sure we have that same liability as everybody else in America. If not, we are treating ourselves as some type of a special class. I do not think that is right. If we do not do it, then there is going to be a measure next year that is going to say let us take the caps off punitive damages, let us sock it to them.

Mr. President, I ask unanimous consent for an additional minute.

The PRESIDING OFFICER. Is there objection to the additional minute? Without objection, it is so ordered.

Mr. NICKLES. Mr. President, instead of having caps on punitive damages as we do on the underlying bill, let us take the cap off because it will not cost us anything. If we are also subject to punitive damages maybe there will be some cognizance of the cost of the law we place on the rest of America.

Mr. President, George Orwell said it well in "Animal Farm" (1945). He said, "All animals are equal, but some animals are more equal than others."

Mr. President, I yield the floor.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. MITCHELL. Mr. President, this is essentially the same issue that we decided yesterday. The Senate, by a 61 to 38 vote, rejected the amendment of the Senator from Oklahoma, and this is essentially the same provision with a few modifications. Instead of attempting to impose executive branch enforcement on the legislative branch and have broad judicial oversight over the legislative branch, the combination of which was plainly unconstitutional, obviously unconstitutional, part of that has been dropped but the essence of it has been retained.

Mr. President, why does this make the provision unconstitutional? The first amendment offered by the Senator from Oklahoma yesterday was written as though the constitutional separation of powers did not exist. It would have provided for massive executive branch enforcement of laws over the legislative branch and the broadest possible scope of judicial branch oversight over legislative affairs.

Mr. NICKLES. Will the Senator yield?

Mr. MITCHELL. The Senator would not yield because of limited time. Senator FORD may like to speak on my time. I thank the Senator.

Mr. President, the question becomes how much, if any, executive enforcement and judicial oversight over legislative branch activities makes it unconstitutional. The Senator from New Hampshire took the position that any—any—such enforcement oversight by another branch of Government makes the provision unconstitutional. By adding additional judicial oversight, substantial additional judicial oversight, so that instead of having a limited right of appeal in the circuit court of appeals, a person would now have a de novo trial, a full trial from the start in Federal district court plus an appeal to circuit court. It makes much more likely a finding of unconstitutionality. These are all matters of degree and the more legislative submission to executive enforcement and judicial oversight that a provision includes, the more likely it is to be found unconstitutional.

So, Mr. President, for that reason the amendment offered yesterday was obviously and blatantly unconstitutional. This amendment, if added to the provision, makes it much more likely to be found unconstitutional than the Grassley amendment.

Again, we have heard a lot of talk about treating everybody equally, but really this is an effort to kill the Grassley provision and to kill this bill, which would eliminate any prospect of Senate employees receiving protection of laws.

This is a case of trying to kill a bill by saying one thing and doing another. That is really what we have here. All of the persons involved in the bill—the Senator from Utah, the Republican leader—all involved in these negotiations have said this is a killer amendment, it breaks the deal, it brings the whole bill down, and the bill will include the Grassley provisions which provide protection of laws.

So the effect of this will be the opposite of the stated intention. In the name of providing more coverage, it will provide no coverage. It is a way of avoiding any oversight, any protection of laws on Senators.

I say that the Grassley amendment as now drafted is a fair and responsible way to address a serious problem to provide reasonable protection of law to Senate employees and to do it in a manner that has the best chance of being ruled constitutional. This provision, if adopted, brings down the whole

bill, including the Grassley amendment, which provides that protection, therefore, leaving without any protection beyond that which exists in current law all of the employees of the Senate.

Finally, Mr. President, I want to say the Senators have just voted—I ask all Senators to pay attention to this—Senators have just voted to impose personal liability on themselves in all such matters. They should now understand that this amendment would subject them to punitive damages in connection with such personal liability.

This amendment, if adopted, when combined with the previous amendment, would subject every Member of the Senate to personal liability for any judgment under the applicable laws and to unlimited punitive damages in addition thereto. That is a matter for each Senator to decide for himself or herself what they want to do.

For myself, I believe that the Grassley amendment now pending is a fair and responsible way to address this problem. This amendment kills the Grassley amendment. This amendment kills the bill and, therefore, Mr. President, I hope that my colleagues will join in rejecting this amendment.

Mr. NICKLES. Will the Senator yield?

Mr. MITCHELL. Do I have any time left, Mr. President?

The PRESIDING OFFICER. The Senator's time has expired.

Mr. NICKLES. Will the Senator yield for 1 minute for a question?

Mr. FORD. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. HATFIELD. Mr. President, over the past 24 hours, the Senate has considered a number of meritorious amendments to the Danforth Civil Rights Act. I have listened with great interest to the persuasive arguments made by my colleagues on this floor. The amendments under discussion seek to impose various acts of Congress on the Senate.

At first blush, an amendment that would require the Senate to live under the same laws that it enacts speaks great fairness. And, if the constitutional objections can be overcome, I could support such a concept. I am in favor of providing all Senate employees with the same rights and protections that are enjoyed by those in the private sector.

But we must be ever mindful of the fragile package that is now in our care. A number of Senators—including this Senator—have spent a significant amount of time over the past year nurturing a viable civil rights bill. After a tremendous effort by Senators on both sides of the aisle as well as the officials in the White House, including the President, we now have reached a historic compromise in this issue that has been so divisive in the past.

As one of the seven original cosponsors of the underlying civil rights bills, I have a keen appreciation for the value of the delicate compromise that was reached last week. My concern is that the controversial amendments that have been offered endanger this compromise, and thus endanger the ultimate passage of the civil rights bill that we have worked so hard for.

It is out of this concern for the underlying legislation that I have voted against each proffered amendment. I want to make clear that my votes against these amendments should not be taken as opposition to the principles behind them. As one who has been intimately involved in the progress of this legislation from its inception, my priority must remain with its passage. I, therefore, must oppose proposals that endanger passage of this bill.

I ask unanimous consent that my statement appear in the RECORD immediately prior to the vote on the Nickles amendment.

The PRESIDING OFFICER. The Senator from Oklahoma has 21 seconds remaining.

Mr. NICKLES. Mr. President, there is no reason not to have Congress included under punitive damages when we do the rest of America. I happen to own a part of a business and we just subjected them to punitive damages. Why do we not do Congress the same way? We just subjected every business in America to jury trials. Why do we not do Congress the same way? It only is fair.

I ask unanimous consent that a letter from the White House be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE WHITE HOUSE,
Washington, October 30, 1991.

Hon. DON NICKLES,
U.S. Senate, Washington, DC.

DEAR DON: I strongly support your efforts to amend the Mitchell-Grassley amendment to S. 1745 so that Congressional employees receive the full benefit of the new civil rights bill. Your amendment, and your amendment alone, would make available to Congressional employees the same remedial scheme being made available to all other employees under the bill: the right to have a court decide charges of discrimination and the right to trial by jury and capped compensatory and punitive damages in cases where the bill will make those remedies available to other employees.

I agree with you that Congressional employees should not be confined to an internal Congressional forum such as the Ethics Committee for redress of violations of their civil rights. That approach, which was incorporated into the Americans with Disabilities Act, allows the Congress, unlike any other employer in this country, to be the judge of its own compliance with the civil rights laws. Thus, Congress effectively preserves its exempt status while purporting to eliminate it. Allowing limited review of Ethics Committee decisions by the courts, as Mitchell-Grassley proposes, likewise does not correct the problem. That approach also does not give Congressional employees the same protection of their civil rights as other employees. Instead, Congress should take the opportunity offered by the Civil Rights Act of 1991 to adopt your amendment and thus set an important precedent by imposing on itself in full the same remedial regime that it is imposing on the rest of the country.

I also support your inclusion in your amendment of language eliminating the recently inserted exemption of the Executive branch from punitive damages. That exemption was not added with the agreement of the Administration or at the Administration's request, and we oppose it. Finally, I would like to make clear for the record that, contrary to what some have said, I have absolutely no objection to providing White House employees the identical protections, remedies, and procedural rights the bill would give private sector employees.

Let me know if there is anything further I can do to assist you in this important matter.

Sincerely,

GEORGE BUSH.

The PRESIDING OFFICER. The time has expired.

Mr. HATCH. Mr. President, reluctantly I have to move to table the amendment of the distinguished Senator from Oklahoma, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table amendment No. 1291. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from California [Mr. CRANSTON], the Senator from Iowa [Mr. HARKIN], the Senator from Nebraska [Mr. KERREY], and the Senator from Pennsylvania [Mr. WOFFORD] are necessarily absent.

The PRESIDING OFFICER (Ms. MIKULSKI). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 54, nays 42, as follows:

[Rollcall Vote No. 237 Leg.]

YEAS—54

Akaka	Dodd	Mitchell
Baucus	Dole	Moynihan
Bentsen	Exon	Nunn
Biden	Ford	Pell
Bingaman	Garn	Reid
Boren	Glenn	Riegle
Bradley	Gore	Robb
Breaux	Grassley	Rockefeller
Bryan	Hatch	Roth
Burdick	Hatfield	Rudman
Byrd	Inouye	Sanford
Chafee	Jeffords	Sarbanes
Cochran	Johnston	Sasser
Conrad	Kennedy	Shelby
Danforth	Kerry	Simpson
Daschle	Lautenberg	Stevens
DeConcini	Levin	Thurmond
Dixon	Metzenbaum	Warner

NAYS—42

Adams	Coats	Durenberger
Bond	Cohen	Fowler
Brown	Craig	Gorton
Bumpers	D'Amato	Graham
Burns	Domenici	Gramm

Heflin	Lugar	Pryor
Helms	Mack	Seymour
Hollings	McCain	Simon
Kassebaum	McConnell	Smith
Kasten	Mikulski	Specter
Kohl	Murkowski	Symms
Leahy	Nickles	Wallop
Lieberman	Packwood	Wellstone
Lott	Pressler	Wirth

NOT VOTING—4

Cranston	Kerrey
Harkin	Wofford

So the motion to lay on the table the amendment (No. 1291) was agreed to.

Mr. MITCHELL. Madam President, I move to reconsider the vote.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1287, AS MODIFIED

Mr. HARKIN. Mr. President, last week, President Bush excoriated the Congress for its failure to follow the same civil rights laws that it imposes on everyone else, including the executive branch and the private sector.

The President is flat wrong when he says that the Congress has exempted itself from the rights and protections available under existing civil rights laws. Section 509 of the Americans with Disabilities Act explicitly applies the rights and protections provided under the ADA, the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, and the Rehabilitation Act of 1973 to employment by the U.S. Senate, the House of Representatives, and the instrumentalities of the Congress.

President Bush is correct when he states that Senate and House employees alleging discrimination do not have a private right of action, that is the right to file a complaint in Federal court. In the Senate, complaints are currently heard by the Ethics Committee and in the House complaints are heard by the Office of Fair Employment Practices.

Last year, Senator GRASSLEY and I were unsuccessful in our attempt to secure judicial review for congressional employees. I am pleased that this deficiency will be remedied with the passage of the Civil Rights Act of 1991.

President Bush, during his speech demanding the Congress submit to the laws that are imposed on the executive branch, stated that people who work for Congress ought to have the same legal remedies—including the right to file a complaint in Federal district court—as those who work everywhere else, including the executive branch and the private sector.

As chair of the Subcommittee on Disability policy and the chief sponsor of the ADA, I agree with President Bush's conclusion that individuals, including people with disabilities, enjoy a private right of action against the executive branch for violations of our Nation's civil rights laws, including section 504 of the Rehabilitation Act of 1973.

The Congress could not have made the law clearer when it amended section 504 in 1978 to make it applicable to Federal agency conduct. Prior to 1978, the law only applied to recipients of Federal aid. In 1978, the Congress also added a procedures section to the law and made it clear that the same procedures that applied to actions by recipients of Federal aid—including a private right of action—also applied to actions by the Federal agencies themselves.

In light of the President's statement recognizing that individuals with disabilities have a private right of action against an executive agency under section 504, I find it incredible that his Justice Department is now arguing before the Ninth Circuit Court of Appeals the exact opposite; that is, people with disabilities do not have the right to pursue their complaint of discrimination in Federal district court against the Social Security Administration or any other executive agency or department under section 504.

The case, J.L. versus Social Security Administration, was brought by people with mental disabilities who could not get the help that they needed from the Social Security Administration to apply for Social Security benefits. Their disabilities, which made them eligible for benefits, also made them incapable of persisting through the complex and demanding application process. They appealed to the Social Security Administration for help and then filed this lawsuit.

The Social Security Administration's response, through their lawyers in the Justice Department was: you don't have the right to sue us in court to remedy the alleged discrimination.

President Bush cannot have it both ways. He's either for civil rights for people with disabilities or he isn't. He either believes that people with disabilities have the legal remedy to file a lawsuit against an executive agency or he doesn't. The Justice Department is not some rogue agency that can act contrary to the will of the President.

The President has spoken—individuals with disabilities have a private right of action against executive departments to address complaints of discrimination. The President must now insist that his Justice Department change its position in J.L. versus Social Security Administration and admit that individuals with disabilities may bring suit in Federal court against executive agencies under section 504 to remedy all forms of discrimination.

A separate question has been raised regarding the existence of a private right of action for employees of the General Accounting Office under the ADA.

When Congress passed the Americans With Disabilities Act, we made it clear that the various instrumentalities of Congress were to create procedures that would allow disabled employees to pursue remedies in cases of alleged discrimination based on a disability. One of the instrumentalities of Congress under the ADA is the U.S. General Accounting Office. Section 509(c)(5) of the ADA states that "nothing in this section shall alter the enforcement procedures for individuals with disabilities provided in the General Accounting Office Personnel Act of 1980 and regulations promulgated pursuant to that Act." This reference to enforcement procedures at GAO was clearly intended to include a private right of private action for GAO employees.

In 1980, when Congress passed the GAO Personnel Act creating a separate personnel management system for GAO, the rights and remedies of the Rehabilitation Act were specifically incorporated into the GAO system. The GAO Personnel Act applies the Rehabilitation Act, as well as other statutes that prohibit employment discrimination in the Federal Government, to GAO.

Public Law 96–191 states that nothing in this act shall be construed to abolish or diminish any right or remedy granted to employees or applicants for employment in the General Accounting Office by sections 501 and 505 of the Rehabilitation Act of 1973. Section 505 provides for a private right of action.

GAO Regulations (4 CFR 28.100) state that an employee or applicant alleging discrimination based upon a handicapping condition may file suit in Federal district court.

In sum, disabled employees at GAO have the same rights and remedies as disabled employees in the rest of the Federal Government. The only difference between GAO, as a legislative branch agency, and other executive branch agencies is that after the 1980 GAO Personnel Act, the responsibility for oversight and administrative adjudication of complaints rests with a board, which is independent of the executive branch.

Mr. DURENBERGER. Mr. President, I rise in support of the Grassley amendment that extends coverage of the Danforth civil rights bill to Congress. This amendment constitutes an important step toward restoring the public faith in our Government institutions, and that is why I am cosponsoring the amendment.

The Grassley amendment is really quite simple. It states that the U.S. Senate shall be subject to our civil rights laws that prohibit discrimination in the workplace.

Mr. President, title VII of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, sex, national origin, and religion. Every employer in America that has over 15 employees is subject to title VII. Businesses, large and small alike, must conform their conduct to the requirements of the law. They cannot refuse to hire or promote individuals on the basis of immutable characteristics such as race, gender, or ethnicity.

American companies have to live by this law and every other law that we pass in this body. My question to my colleagues is this: Why doesn't the U.S. Senate have to live by the same laws that everyone else does? There is no reasonable answer to that question.

These past few weeks, during the Thomas Supreme Court nomination hearings, many of my constituents in Minnesota were outraged that the Senate Judiciary Committee did not appear to take seriously Anita Hill's charge of sexual harassment. Whether true or not, the public has the perception that we in the Senate are out of touch with reality. We live and work in a plastic bubble, immune from the problems and concerns of ordinary people.

Minnesotans who I met with personally regarding the Thomas nomination and who wrote letters that I personally read, told me that they were tired of watching Congress legislate and operate in a vacuum. They believe that we pass laws here in Washington, DC, but do not understand their concerns back home.

I should add that business feels the same way. Many companies believe that Congress keeps placing new mandates on them, raising their taxes, increasing their regulatory compliance procedures, bleeding them dry—with the accompanying effect of decreasing their global competitiveness. These businesses believe that we in Congress do not know what its like to run a business, and yet we constantly tell them how to do it.

Mr. President, I believe that concern of ordinary citizens—of employees and employers—that the Congress is out of touch with reality, demands that we pass the Grassley amendment.

I would like to digress for a moment to illustrate my point. Sexual harassment is a serious problem for American women in the workplace. In 1985, there were 4,280 sexual harassment charges filed with the Equal Employment Opportunity Commission [EEOC], and this increased to 5,572 in 1990. That was a 30-percent increase in sexual harassment charges over the last 5 years. This is merely indicative of the general increase in the number of charges filed at the EEOC. For instance, in 1990, there were almost 82,000 discrimination charges at the EEOC; that number climbed to 89,000 claims, an almost 9-percent increase, over the last 10 years.

Some might say that this general upward trend does not indicate an increase in discrimination. Instead, the data suggests that either people are simply reporting discrimination more often, whereas in the past, they suffered silently. Others might argue that many of these claims were frivolous, and just because there was an increase in discrimination claims does not prove that there actually was discrimination occurring.

Mr. President, the data is subject to different interpretations, and yet it highlights my point. Employees who suffer from discrimination want a Congress that understands their problems, and businesses that may suffer from frivolous claims want a Congress that understands their concerns. When we exempt the Senate from the mandates that we impose on the rest of the country, we simply underscore the perception that we are out of touch with reality. Instead, we accent the public's belief that Senators think themselves to be above the law. And that fuels anger and resentment in Minnesota and everywhere else.

We need to understand what is going on outside the Washington Beltway. America is upset with us. Our only hope of restoring their confidence is to stop bickering with each other about where a comma or punctuation mark is located in a bill, to pass sensible legislation such as the Danforth civil rights bill, and to start applying the laws that apply to the rest of the country to ourselves. That is the only way we are going to restore the public trust.

Mr. MITCHELL. Madam President, have the yeas and nays been requested on the Grassley amendment?

The PRESIDING OFFICER. They have not been.

Mr. MITCHELL. Madam President, it is my understanding that a rollcall vote will not be necessary on the amendment, and if that is the case, I ask that we proceed to dispose of that amendment.

Mr. RUDMAN. Madam President, I have thought about this. I have just been asked about it. I am going to, reluctantly, not ask for the yeas and nays, in the interest of moving this along. I just want the RECORD to show that I would vote "no."

The PRESIDING OFFICER. The RECORD shall so reflect.

The question is on the Grassley amendment, as modified.

The amendment (No. 1287), as modified, was agreed to.

Mr. MITCHELL. Madam President, I move to reconsider the vote.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MITCHELL. Madam President, with respect to this amendment, I want to recognize the contribution of Senator GLENN. The internal Senate procedures set forth in the Grassley amendment just adopted by the Senate were drawn, I am advised, from S. 1165, legislation previously introduced by Senator GLENN. It is our hope that they will provide a fair, responsible method for making available to all Senate employees protections against discrimination which are available to others and do it in a manner consistent with our Constitution.

I thank all concerned with this matter, particularly the Senator from Iowa, for his willingness to reach agreement on the matter, and I thank my colleagues for their cooperation.

I am going to ask the managers of the bill, Senator KENNEDY and Senator HATCH, to inform the Senate of the current status of the legislation, and when we might expect final action, so that Members of the Senate can prepare their schedules accordingly.

Mr. HATCH. Madam President, for the benefit of all of our colleagues, we will now proceed with the Warner-Mikulski amendment, which should not require a rollcall vote, and which should be accepted. Immediately following that, we will hopefully go to the McCain amendment, which also should not require a rollcall vote. I believe both of these should be relatively short.

As I understand it, Senator BROWN is not going to offer his amendment, so that does away with Senator KENNEDY's second-degree amendment. Senator WARNER is not going to call up with his prospective application amendment, if I am correct.

Mr. WARNER. Madam President, I will speak about it at the appropriate time.

Mr. HATCH. Then Senator KENNEDY's second-degree amendment will not be considered, if that is so.

Then we have a number of technical amendments, and I think final passage; do I state that correctly?

Mr. CHAFEE. Madam President, it is hard to hear. May we have order?

The PRESIDING OFFICER. The Senator is right. The Chair will now go into a very strict observance of the Senate rules. The Chair will ask these Senators to my right to please take their seats. The Chair will ask the Senators all to take their seats, and the Chair will ask the Senator from Utah to speak loudly into his microphone.

Mr. HATCH. Madam President, after the Warner and McCain amendments and a number of technical amendments, I think we will go to 30 minutes of final debate on final passage. At least that is my understanding, unless the Senator from Massachusetts believes otherwise. We hope to be able to dispose of this within the next hour, I would say, at most.

I would also state, Madam President, that I would have voted for Senator GRASSLEY's amendment had the Senate had a rollcall rather than a voice vote. While concerns I had about its constitutionality led me to vote for Senator RUDMAN's measure last night, with that having failed, I would certainly support Senator GRASSLEY's congressional coverage amendment.

Mr. KENNEDY. Madam President, the Senator from Utah has stated this correctly. I think, in terms of time, we are talking about approximately an hour before final passage. It certainly should not be much more than that. Hopefully, we will try to finish in less

than an hour. But in terms of people making their plans, I think an hour is about what we are talking about.

So, Madam President, I see both the Senator from Arizona and the Senator from Virginia are on the floor. We are glad to deal with their amendments in whatever order they desire.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Madam President, I thank the managers of the bill and the staffs. They have been exceedingly helpful to this Senator as I have tried to pursue my analysis of this bill. Based on conversation with both managers, I notify them that I shall not bring up the amendment recited on page 2 of the consent in the matter of Warner—prospective application.

Mr. KENNEDY. May we have order? The Senator is entitled to be heard. This is an extremely important amendment, which will affect tens of thousands of Americans. It is important, and the Senator is entitled to be heard.

The PRESIDING OFFICER. The Chair will ask all Senators to take their seats, including those who will participate in this debate. The Senator is right. The Chair would like to have voluntary cooperation.

The Senator from Virginia may proceed.

Mr. WARNER. I thank my distinguished colleague from Massachusetts.

Madam President, I further inform the Senate and the managers that I shall not pursue amendment 1285 at the desk. Rather, I shall now send to the desk a new amendment covering the issue of the coverage of Government employees.

AMENDMENT NO. 1292

(Purpose: To clarify that Federal employees may recover damages for intentional employment discrimination and to allow damages for intentional discrimination under the Rehabilitation Act of 1973)

Mr. WARNER. Madam President, I send an amendment to the desk on behalf of the distinguished Presiding Officer, Ms. MIKULSKI of Maryland, Mr. STEVENS, Mr. ROBB, Mr. WIRTH, Mr. KENNEDY, Mr. SARBANES, and Mr. ADAMS, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Virginia [Mr. WARNER], for himself and Ms. MIKULSKI, Mr. STEVENS, Mr. ROBB, Mr. WIRTH, Mr. KENNEDY, Mr. SARBANES, and Mr. ADAMS, proposes an amendment numbered 1292.

Mr. WARNER. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 4, line 5, insert "or 717" after "706."

On page 4, line 10, strike "or 704" and insert "704, or 717".

On page 4, line 23, insert ", and section 505(a)(1) of the Rehabilitation Act of 1973 (29 U.S.C. 794a(a)(1))," respectively before "against a".

On page 4, line 25, insert "section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) and the regulations implementing section 501, or who violated the requirements of section 501 of the Act or the regulations implementing section 501 concerning the provision of a reasonable accommodation, or" before "section 102".

On page 4, line 25, strike "Act" and insert "Americans with Disabilities Act of 1990".

On page 5, line 10, insert "or regulations implementing section 501 of the Rehabilitation Act of 1973" before ", damages".

On page 4, line 20, insert "or 717" after "706".

Mr. WARNER. Madam President, the reading of the amendment itself would not, I think, be of particular interest to the Members because it is drawn in a very technical way to cover a very, very important problem. While drawn technically, it is in no sense a technical amendment. As the distinguished Senator from Massachusetts said, it affects several million Americans now working for the Federal Government.

A number of our colleagues have approached me concerning the impact of the Federal employee amendment, which I am sponsoring, and I mentioned the sponsors. Yesterday I discussed the intent of the legislation and, at this point in the RECORD, Madam President, I ask unanimous consent that the remarks that I made yesterday in relation to this amendment be printed in the RECORD so that there is a continuity by those desiring to study the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Mr. WARNER. Mr. President, I support the efforts of the distinguished majority leader, Republican leader, and others who tried to put this together. We are dealing with one of the most important things, in my brief tenure in the Senate. I wish we had more time to devote to it because I think the debate has been constructive tonight. But I want to pick up on this note that the taxpayer has to pick up the bill.

What is the alternative? I find it unsatisfactory. But what is the alternative to a Senator, married, three children, trying to get through school, maintain two residences? Does he in fact, absent some private resources, have any funds with which to pay the fine?

Mr. RUDMAN. Of course, under the way this legislation is presently constructed, the judgment would be presented to the Treasurer of the United States through the Senate disbursing office. And not only for the $20,000 award but for all reasonable attorney's fees.

Mr. WARNER. For the attorney's fees.

Mr. RUDMAN. Which, these days, seem to be somewhat unreasonable reasonable attorney's fees. So you get a bill for maybe $25,000 or $23,000 paid for by the Treasury for a sexual harassment case, a blatant case, international discrimination based on race.

That is fine but I do not think the taxpayers ought to pay for it.

Mr. WARNER. Mr. President, I find that unsatisfactory. What is the alternative? The Senator has no funds.

Mr. RUDMAN. I have an alternative.

Mr. WARNER. Just bear with me. The Senator has no funds. Is it fair for the employee? In fact, if you work for a Senator who simply does not have the funds—and what we have is published, given some brackets, between which you cannot figure out between the haves and have-nots—is it fair to the employees, of those who are published as a matter of record having limited funds? What are you doing to those employees?

Really, what you are saying, if you put up the amendment, to strike that provision, you are in effect saving 50 State legislatures the burden of facing term limitation. It will be a bailout around here of a wholesale nature.

Mr. RUDMAN. Something that has not been mentioned here in this debate I think probably ought to be mentioned. Up until this moment the President, the Congress, and all of the State governments, Governors and county executives and so forth, are exempt for their policymaking positions.

This repeals that.

Mr. WARNER. Can the Senator from New Hampshire be on his time? He tends to be slightly elongated on occasion.

Mr. President, it is of the utmost importance. We are up here making great speeches and great press about the taxpayers, when in fact, practically speaking, the employees have no recourse—if you strike out that and make it a personal liability—in those instances where the Senator comes here of limited means.

I should like to pose that question to my colleague. What happens to the employee of a Senator of published limited means?

Mr. CHAFEE. Well, I hardly think when we are discussing Senators of the United States, that we are talking about a deprived class.

Mr. WARNER. Mr. President, if you had a judgment of $50,000 imposed on a Senator who, together with his family is living on this salary, I question whether that Senator could have the $50,000 to pay the judgment.

Mr. CHAFEE. If he had a judgment rendered against him for any other incident, whether it was an automobile accident or a contract dispute or whatever it was, he would manage to come up with the money.

Mr. WARNER. Mr. President, I do not find that a satisfactory answer to a serious question.

Mr. CHAFEE. No; it was a question of can he pay? He ought to behave himself.

Mr. WARNER. Mr. President, let us not make a mockery out of this bill. This is serious business. We are talking about the rights of our employees, and I am saying those employees who seek employment with a Senator of limited means would have no other recourse for their—

Mr. CHAFEE. He is dealing with an individual who is on the payroll of the U.S. Government and receiving a check totaling $125,000 a year.

There is a perfect chance to withhold. I could not see a better chance to attach those wages, that salary, to get the compensatory damages that are awarded.

So I am not going to shed crocodile tears over some Senator who cannot pay a judgment that he should pay when it is found that he has sexually harassed an employee.

Mr. WARNER. Mr. President, I made my point within my time. I think we should try as best we can to fashion a bill to reach the goals of the distinguished Senator from Iowa, now joined with the majority leader and Republican leader, to solve this question, and not put forth these amendments, which I think in a less serious way will challenge the efforts by our leadership.

Mr. WARNER. Today, as the amendment is brought up, I then add to ex-

tend to Federal employees the same civil rights protections provided under the legislation for private sector employees. I would like to briefly share what the amendment will actually do.

Currently, in the Federal Government women, ethnic and religious minorities, and employees with disabilities have ready access to due process in matters of job discrimination. They have 30 days to report a discrimination case to the local agency equal employment opportunity officer, that is, an EEO officer, who then initiates an investigation.

I understand the process can be quite lengthy, but a formal complaint will be filed if the EEO officer concurs with the employee, and, in most cases, mediation takes place within the agency. If the employee disagrees with the findings of his or her local EEO representative, the employee may take the case to the full Equal Employment Opportunity Commission, EEOC, for review.

The EEOC then examines the case and will potentially represent the employee in dealing with the offending agency. Agencies are not required to comply with the EEOC recommendation, but it is in the best interest of all to cooperate. Cases may be further appealed to an EEOC judge in extreme cases.

The employee is also entitled to take his or her case to Federal district court. When the case goes into the Federal judiciary, the EEOC no longer plays an active role.

The heart of the matter, as in the underlying bill, is the manner in which the employees are compensated in cases of intentional discrimination.

Remedies available under present law include:

One, reinstatement; two, back pay; three, restoration of benefits; and, four, public notice.

My amendment would add to the list of remedies compensatory damages including those covering pain and suffering, and that is a very important subject.

I believe that Federal employees who may happen to be women, disabled, or members of ethnic or religious minorities should—I underline should—be provided the same protections under the law as are currently provided in cases of racial discrimination. That is the goal of this amendment and those who support me in accomplishing this end.

It is my hope that all of our colleagues will be able to join in this important effort for the career employees of our Federal Government. I would be remiss if I did not acknowledge the continuing support of the American Federation of Government Employees, particularly their representative, a very able professional, Beth Moten. In addition, Mr. John Chambers, of Senator DANFORTH's staff, and Ms. Carolyn Osolinik, of Senator KENNEDY's staff.

This is a joint endeavor on behalf of 3 million employees by those who assisted in the preparation of this amendment.

The PRESIDING OFFICER (Mr. ROBB). The Chair recognizes the Senator from Colorado [Mr. WIRTH].

Mr. WIRTH. Thank you, Mr. President. I thank the distinguished Senator from Virginia for his good work on this subject, and I am pleased to join him in supporting this important amendment. Many of us have been deeply concerned, Mr. President, and my own feelings have been on the record and elsewhere, about what has gone on in the last month, about the fact that I believe we are in this society, and despite our espoused goal of treating everybody in equitable fashion, we have not yet reached that goal. We have very many significant problems remaining in this bill related to women, and I understand how we got to this point. I hope we redress that, and I look forward to working with the distinguished chairman of the full committee in this coming early 1992 to address those problems.

We have reached, or are taking care of, some other problems in this legislation, and one of those is the treatment of Federal employees. We know that Federal employees have also been treated as second-class citizens, not given the same rights, not given the same redress, not given the same remedies as other individuals in this society.

I think the amendment, which I am pleased to cosponsor with the distinguished Senator from Virginia, and others, redresses that problem. Anita Hill, for example, in the EEOC would not have had any redress. Had all these allegations come forward and been proven, even she would not have had redress as a Federal employee in the early 1980's, nor would she have any today. This amendment focuses on that particular problem, the problem of Federal employees and their ability to achieve a remedy when discrimination in various forms is proven.

The point is, it is an important remedy, an important amendment. And, as you know, Mr. President, the Denver metropolitan area has the largest concentration of Federal employees outside the Washington, DC, area. We have an extraordinary, dedicated, and able work force there. I am a strong supporter of career service. I think we often treat them much too shabbily and do not give them the credit for dedication and the job they are doing, and I think that this amendment goes back to that question and to assuring them there are many of us here who feel very strongly that they should be treated equitably and treated fairly and not treated with the back of the hand or as second-class citizens.

Once again, I thank the distinguished senior Senator from Virginia.

Mr. President, I rise today to discuss what I consider to be a gaping hole in the Civil Rights Restoration Act before us today—a hole so large that I question if we can in fact term this piece of legislation a civil rights bill. By passing this bill, we will be taking the first and necessary step to restoring some civil rights for some groups. But it also will codify a premise that goes against the very grain of our Nation—it will say that we believe people should be treated separate and unequal.

During the past couple of weeks, a great deal of attention has been given to sexual harassment in the workplace—attention that is warranted. It was my hope that all this attention would have raised the awareness of the Members of this body and encouraged them to right a wrong that exists in the bill we are debating. But instead, we find ourselves in the outrageous position of having to compromise the women of this country to reach a compromise on the civil rights bill.

I commend the efforts of the Senator from Missouri in his persistence in bringing a civil rights bill to the floor. I also commend him for attempting to fill the void in our laws that prohibit women and the disabled who have been discriminated against from gaining compensatory and punitive damages. If we took an impromptu nationwide poll, I think that we would find that most people are shocked to learn that women and the disabled are separate from the rest of the population in that they have no remedies for being discriminated against. So I am pleased that we are finally making progress on that front.

However, I think some people will be perplexed that now, while we are trying to establish some equity in our laws, we turn around and create a new injustice. Now that remedies are finally available for women and the disabled, we are going to impose limits on their extent. Of course, no one else is limited, except for one slice of the population, which is singled out to be treated as second-class citizens and deserving only second-class remedies. In all honesty, I do find it unfathomable that this is the course we have chosen to head into the 21st century.

Two weeks ago, the entire Nation watched and saw what can happen to women who step forward to recall painfully humiliating experiences of sexual harassment. And now, this legislation reinforces that message that if you do come forward in these instances, you will be further compromised by the law.

Are there caps in the law for racial discrimination? No.

Are there caps in the law for discrimination based on country of origin? No.

Are there caps in the law for discrimination based on religious convictions? No.

But there are caps in this bill for cases of gender-based discrimination and sexual harassment.

Clearly we are being unfair and unjust to impose caps on these kinds of discrimination cases. This action contradicts the very cornerstone of civil rights, the guiding principle of our country—and that is equality. It took us 125 years to provide women with the remedies afforded to others—I can only hope that it does not take 125 more years to remove the limits we have imposed.

It is a matter of simple fairness to provide women and the disabled with the same remedies that the law provides to victims of other forms of discrimination. But now, in the name of civil rights, women and the disabled who are discriminated against in the workplace can take their cases to the courts, where they will be discriminated against again. That does seem ironic, does it not?

I think women in this country are sick of this kind of treatment. During the Thomas hearings, we supposedly had a national teach-in on sexual harassment. Unfortunately, with this legislation, we see yet another case of the male-dominated machinery of Washington not making the grade.

When we fought for civil rights 30 years ago, when women began entering the workplace rapidly 20 years ago, who could have imagined that we would ever again consider legislation that confers civil rights to one segment of society, only to deny them to another segment of society?

The situation is unfortunate and frankly, incomprehensible. Mark Twain told us, "Always do right. This will gratify some people, and astonish the rest." We had the opportunity to do so. Sadly, we have gained only the gratitude of the White House and astonished no one.

We have moved forward—we are making some progress in bringing the Nation together to protect civil rights. The White House has finally come to where we have been all along—knowing that the civil rights bill is not a quota bill, it is a fair employment bill. However, President Bush has made it clear—no caps, no bill. I am still waiting for him to explain to the American public why he believes that women should take the back seat and continue to receive unequal treatment under our Nation's laws. But that explanation will come at another time.

I do see some progress in his thinking. The good news is that President Bush now seems to understand that women, along with the rest of the country, are in fact protected by the seventh amendment of the Constitution and have a right to a jury trial. My hope is that we have laid aside the misguided idea of denying women from having a jury determine whether or not they have been wronged.

I hope that we can also lay aside the fallacious arguments for why we must include caps on damages for a select majority of our population. This is not an issue about runaway liability claims or even overall tort reform, as some have suggested.

I think the point has to be made in response to opponents' claims that without caps, there would be a litigation bonanza. Let us take a look at history—in the last 10 years there has been an average of six discrimination cases a year in which settlements came about. That is six cases a year. Not quite a litigation bonanza. This claim is pure rhetorical flourish.

Civil rights cases are not the cases that add to this country's litigation explosion. First of all, only six cases in the last 10 years have been awarded damages of more than $200,000. Two-thirds of the 69 cases over the last 10 years where claimants received punitive and compensatory damages were for less than $50,000. Discrimination cases are not the hotbed of outrageous awards.

Further, if we are going to address the issue of runaway liability, let us address it across the board—not on the backs of women. If the real concern is that lawsuits have gotten out of control, let us confront the real issue and consider product liability reform or malpractice reform where the big dollar suits are won. The big awards we all hear so much about are not going to the individuals who have been discriminated against at work.

Others have claimed that small businesses would be devastated by allowing women to sue for damages. How many small businesses have gone under since racial or religious discrimination suits could be filed? Why do people believe that women are going to bring frivolous suits to the courts and drive businesses under? I would like to remind businessowners that claimants win suits when they have been wronged by their employer. The simple solution is to treat your employees fairly, giving them no need to bring a case against you.

Another point worth raising is that under existing law, businesses with fewer than 15 employees—50 percent of the businesses in the United States—are already exempt from antidiscrimination measures.

So this injustice will not be dealt with in this bill. The White House said no civil rights bill will be signed into law that treats women fairly, so offering the amendment we proposed earlier would be a deal-buster. Because our efforts to ensure equitable damages would have prevented any progress in restoring civil rights, we have decided to pursue other avenues to achieve this goal.

I will work with the majority leader and others to bring legislation to the floor early next year that will right this wrong. I believe our responsibility to the country is to enact laws that treat all people fairly and we must continue to pursue that course.

The PRESIDING OFFICER. The Chair recognizes the Senator from Maryland [Ms. MIKULSKI].

CHANGE OF VOTE

Ms. MIKULSKI. Mr. President, I do want to speak in behalf of the Warner-Mikulski - Stevens - Robb - Wirth - Kennedy - Sarbanes - Adams amendment. But before I do, I want to bring to the Senate's attention on the rollcall vote No. 236 on the Rudman amendment No. 1290, I inadvertently voted in the affirmative. I ask unanimous consent that my vote be changed and that I be recorded in the negative on this vote, and I will note, Mr. President, that this change will not affect the outcome.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. MIKULSKI. Thank you, Mr. President.

(The foregoing tally has been corrected to reflect the above change.)

AMENDMENT NO. 1292

Ms. MIKULSKI. Mr. President, I am happy to join my colleague, Senator WARNER, from Virginia, in offering this amendment on parity for Federal employees. This amendment will make it possible for a jury to award compensatory damages to Federal employees who are victims of intentional discrimination or harassment. It is time to get rid of double standards in Government. It is time to provide Government employees the same protection that other employees in the private sector have. If you suffer from sexual harassment, it is just as humiliating whether it is in a Federal agency or a major company. If you are a victim of racial discrimination, it hurts and stings just as much whether you work at a corporation or, again, at a Government agency.

Mr. President, we have to establish new standards of behavior in our country, from all streets to the U.S. Congress. I believe this legislation does that. For too long Federal employees have had to suffer silently. This amendment will begin to change that. I thank the managers for considering this amendment.

I will vote in the affirmative, and I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

The Chair recognizes the Senator from Massachusetts [Mr. KENNEDY].

Mr. WARNER. Will the distinguished manager yield for a minute?

Mr. KENNEDY. I yield.

Mr. WARNER. I acknowledge the support the Senator from Virginia has received from the distinguished Senator from Maryland [Ms. MIKULSKI] in the preparation and the presentation of this amendment. Likewise, to the distinguished Senator from Colorado [Mr. WIRTH]. Mr. WIRTH was fully prepared to take the leadership on this amendment and was working in parallel with the Senator from Virginia. I received

recognition and moved forward with the amendment, and, of course, in the spirit of cooperation, he fully joined in supporting it. I thank the Chair and I thank the manager.

Mr. KENNEDY. Mr. President, as the Senator from Virginia has pointed out, this is a worthwhile amendment. It is completely consistent with the spirit and the letter of the Danforth-Kennedy amendment itself. On page 5 of the legislation, in the section defining the right to punitive damages, the substitute states, "A complaining party may recover punitive damages under this section against a respondent (other than a government, a government agency of a political subdivision)."

Clearly, it was our intent that the limitation on the award of punitive damages would apply to Federal, State, and local governments. It would not have made any sense to interpret this provision otherwise. This provision certainly suggests that Federal employees are entitled to compensatory damages.

But the value of this particular amendment is that it makes this intent specific. I think it is extremely useful for it to be unambiguous that Federal employees are entitled to receive compensatory damages. That is what this amendment does. It is completely consistent with the legislation and the intention of those that support the legislation. It is, I think, very useful and important.

I express our appreciation to all of those who have been involved in fashioning the amendment and hope that the Senate would accept it.

(Ms. MIKULSKI assumed the chair.)

Mr. HATCH. Madam President, I want to compliment you and the distinguished Senator from Virginia for the work you have done on this, as well as others including Senator GLENN.

We have no objection on this side.

Mr. WARNER. I thank the managers for their statements and ask that the amendment be adopted.

Mr. KENNEDY. Madam President, I think there was a time agreement. I yield back the remainder of my time.

Mr. HATCH. I yield back our time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment.

The amendment (No. 1292) was agreed to.

Mr. KENNEDY. Madam President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1293 TO AMENDMENT NO. 1274

(Purpose: To ensure an accurate representation to the American people of the applicability of various legislation to the Congress)

Mr. MCCAIN. Madam President, I have an amendment at the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN] proposes an amendment numbered 1293 to Amendment No. 1274.

Mr. MCCAIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection it is so ordered.

The amendment is as follows:

At the end of the amdt., add:

SEC. REPORTS OF SENATE COMMITTEES.

(a) Each report accompanying a bill or joint resolution of a public character reported by any committee of the Senate (except the Committee on Appropriations and the Committee on the Budget) shall contain a listing of the provisions of the bill or joint resolution that apply to Congress and an evaluation of the impact of such provisions on Congress.

(b) The provisions of this amendment are enacted by the Senate as an exercise of the rulemaking power of the Senate, with full recognition of the right of the Senate to change its rules, in the same manner, and to the same extent, as in the case of any other rule of the Senate.

Mr. MCCAIN. Madam President, I will be very brief. I would like to express my appreciation to the managers of the bill and also to the chairman and ranking member of the Rules Committee for accepting this amendment. I think it is important. I appreciate the cooperation I have gotten from them and their staffs.

Madam President, this amendment requires that every report accompanying a bill or joint resolution reported by a Senate committee, except the Budget or Appropriations Committees, contain a section listing how, where, and to what extent the legislation applies to Congress.

It is fairly straightforward. I think that the American people, as well as the Members of this body, have the right to know how that legislation, when passed, if at all, applies to the Congress of the United States.

The public has expressed their rage over the imperial Congress, a Congress that maintains one set of rules for itself, and another set for the remainder of society.

The American people must be told what laws do and do not apply to the Congress. The public can then express its opinion on whether the Congress' actions are right or wrong. In fact, in my view, the public must be the final arbiter on this issue. However, the public cannot make an intelligent decision if it does not have the facts.

Madam President, my amendment will give the public the facts. It will also ensure that in the future we do not forget our obligation to apply the laws of the land to ourselves. With the acceptance of my amendment, the public will from this point forth be able to make a more informed, intelligent decision on this issue.

We are constituted as a "government of the people," not above the people. And the people will not tolerate forever our preservation of the "last plantation" in America.

Madam President, by adopting my amendment, the Senate is taking an important step to restore its reputation and be forthcoming with those who have elected us.

Although I am very pleased that the Senate has adopted the Grassley-Mitchell amendment which will apply the civil rights protections to the Senate—which I wholeheartedly support—unless we change the system under which we operate, the issue will not be fully resolved.

There are still many major labor, health, and safety standards which we do not apply to ourselves. Further, if it becomes necessary for the Congress to pass yet more civil rights legislation in the future, will that legislation then apply to the Senate? As I stated, the system needs to be changed. My amendment does exactly that.

If the American people do not mind that the Senate is legally committing them to standards from which we, in Congress, are excused, then we have nothing to change. If, however, the American people believe in equality for all as written in the Constitution by the Founding Fathers, I suspect that they will not long tolerate our perpetuation of this practice.

Madam President, it is my understanding that the Rules Committee has no objection to my amendment and that it has been accepted by both sides.

Madam President, last I want to thank those involved with the civil rights bill, Senator HATCH, Senator KENNEDY, and most especially, Senator DANFORTH, for all their efforts to pass this bill and for accepting this amendment. This is an important step in the right direction for the Senate.

I would close by saying, Madam President, that we have heard a lot of debate, very informed debate and very eloquent debate in my view, on what is constitutional, what is not constitutional; to what degree the legislative branch under which we work should be held accountable to the executive branch in the form of what kind of enforcement can be made.

I think it is important for us to recognize one basic fact: that when we pass these laws throughout the years, there has been no effort on the part of this body and the other body to put in place mechanisms so that we could enforce these laws on ourselves. Clearly, we could devise mechanisms which would have preserved the separation between the legislative and executive branch and at the same time enforce those laws on the Congress of the United States.

Madam President, I do not know any citizen of this country that wants to violate the Constitution, that wants to

see the separation between the Executive and the legislative branch eroded. But I do see an overwhelming majority of the American people that want us to follow the same rules and regulations upon which they have to live on a day-to-day basis, Madam President, and we have made no effort, no effort, to set up either an appeals process, or grievance process, or inspections in the case of some laws like OSHA. We have done nothing, thereby creating a situation where our employees and our working conditions and our rules and regulations are far different from that of the average American.

One of my colleagues came up to me and said, "I want to be able to fire my employees because, otherwise, I cannot operate in an efficient fashion." I am sure that anyone who runs an organization or a business probably wants to have the same privilege or ability to do so. The fact is, our employees deserve the same rights and benefits that any other citizen of this country does.

So I think it is important that we point out the reality here. It is not a question of separation of powers. And we can make sure that that separation of powers is not violated, and we can do so by proving to the American people that we are willing to set up mechanisms so that the laws of the land are enforced on us as well as others.

So, Madam President, this amendment that I have simply indicates, as part of any piece of legislation, whether it applies to the Congress of the United States. And, if so, in what way. It is very simple.

I am grateful that the Chairman and the ranking member have accepted it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, the Senator from Arizona discussed this amendment with us yesterday. We are prepared to accept the amendment.

As I understand the amendment of the Senator from Arizona, it would require that each committee report on a bill other than an appropriations bill contain a listing of the bills that apply to Congress and an evaluation of the impact such provisions will have on the Congress. Clearly, the American people have a right to know whether laws that Congress adopts are applicable to the Congress itself.

The Senator, as I understand it, is offering the amendment in the form of statutory language enacted by the Senate as an exercise of its rulemaking power. With that understanding, I am prepared to accept the amendment.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, I commend the distinguished Senator from Arizona for his amendment. This side has no objections to it. Therefore we urge the amendment.

Mr. KENNEDY. I am prepared to yield back the remainder of time.

The PRESIDING OFFICER. There is time remaining on the amendment.

Mr. HATCH. I am prepared to yield back the remainder as well.

Mr. KENNEDY. I wonder if we are getting to the point where we only then have the 30 minutes?

Are the technical amendments outside of the time agreements?

The PRESIDING OFFICER. The technical amendments are outside of the time agreements, Senator.

Mr. KENNEDY. So we do not have a time limitation on that.

The PRESIDING OFFICER. The Senator is correct on his assessment.

Mr. HATCH. If we have time left, the distinguished Senator from New Mexico would like 4 minutes.

Mr. MCCAIN. I yield the remainder of my time to the Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Madam President, during the last 24 hours a number of us have had an opportunity to discuss the issue at hand, not the underlying main bill but rather what should and what should not be applied to the Senate of the United States with reference to laws that we have passed that create regulatory schemes for our people or cause causes of action in the workplace.

I argued last night against the Nickles amendment, and I supported Senator RUDMAN's amendment, and I supported Senator RUDMAN's constitutional challenge last night. So I do not want anyone to misunderstand my position or my approach.

Frankly, I believe the time has come to divide the U.S. Senate into at least two institutions for purposes of the subject we have been discussing. One is the U.S. Senate, the Senators, and all those who serve the Senators in policy-making or policy-related positions. And I believe that is the U.S. Senate. And I believe that entity—that institution—it would have to be more aptly be defined than I did in that rather simple definition—but I think that is the Senate that we are talking about in the Constitution. I believe that is the Senate that deserves consideration with reference to the rules, regulations, and other laws of the land because we are separate, distinct, independent from the executive and the judiciary.

But all the rest, all of those people that we hire to maintain this Senate, those who take part in the Capitol improvements, those who are part of making sure we are served the food we need around here, who take care of the tourists, all those in my opinion are really not part of the Senate. They are employees of the Senate. And I see no problem, and I hope soon we will look at all of the laws and say—as to those people and the activities that surround them, the buildings that they occupy—they should be treated just like all Americans and all those who are working for businesses across this land. I believe that that distinction could be made and drawn and done easily.

And then, it seems to me, we could talk about the Senate, a much smaller entity, a much smaller institution. Our employees in our respective States, those in our offices, those on the committees and the like. I believe as to them we should be very, very zealous, and watch out for interference in our independence from any commissions, any institutions that are executive, and any activities that are judicial. Because I believe the Framers of this Constitution, when they said there shall be three, the Executive, the legislative, and the judicial, they really had in mind that neither of the others would interfere; neither would interfere with the other.

So the President would not have any right to send emissaries over to our offices to see if we were violating a law or not; we would have to do that ourselves. So, second, I think after we break it into two parts we should apply the laws of the land to the part that is not really "the Senate" but rather employees of that institution we call the Senate. And then we ought to apply as many of the remaining laws as possible, but apply them in a way that is consistent with our—that is "the Senate"—managing the various laws, the various applications of the laws internally to the Senate.

With that it seems I am prepared to go to my home State and explain the way I have voted. Because I would like us to be subject to the laws but I do not think we have been approaching it in a way that is consistent with our remaining independent, our remaining the coequal body, coequal with the President of the United States. I think we are violating that, and I believe the amendment we are debating today that we just agreed to on voice vote will fall. The Supreme Court will determine it invalid for the very reasons I have been discussing. You clearly cannot put the courts into our day-by-day business. Clearly you cannot have Senators and Representatives and the President and some of his people subject to the rules and regulations for the other as prescribed in that amendment.

I thank the Senator for yielding 4 minutes to me and I yield the floor.

The PRESIDING OFFICER. The time of the Senator from Arizona has expired. The Senator from Utah.

Mr. HATCH. Madam President, on Senator KENNEDY's time I yield 3 minutes to the distinguished Senator from Vermont.

The PRESIDING OFFICER. The Chair recognizes the Senator from Vermont.

Mr. JEFFORDS. Madam President, I hope today is the last day we will discuss the issues raised by this bill. It has consumed an enormous amount of

time and energy. For almost 2 years, we have wrestled with some complex but unquestionably important issues. It is time to put these issues behind us.

I hope, by the end of today, we will have no more need to debate terms like "business necessity" and "disparate impact." I hope we can do this because the broader issues of equal opportunity and demand for our attention to those issues, is ended.

For all the symbolic, emotional, and actual importance of this bill, it is nothing more than a backstop. Minorities and women will prosper in our society only if they can grow and learn and work as full members of our society.

Our best answers to inequal opportunity are not juries or damages, but programs like WIC and Head Start and chapter 1 and Pell grants and JTPA. These programs, and the far greater efforts made by States and towns and private citizens are what will bring us to the colorblind society we crave.

But we are not there yet. And until we are, it would be the cruelest of ironies for the Federal Government to help secure the health, the education, and the training of a disadvantaged person, to make him or her qualified for a job, only to have that job denied by some misguided employer.

The Government has an obligation to guarantee a workplace free from discrimination, whether that workplace is in Vermont or the U.S. Senate. We cannot tolerate for a second overt acts of race or sex or religious discrimination that stain our country.

How can we speak with any moral authority to other countries of the world, fraught with ethnic and racial tensions, if we ourselves have not made every effort to stamp out those divisions in our own country?

Of course, we cannot. We owe it to ourselves as much as to others to create a more just society.

If some good came out of the confirmation of Justice Thomas, it is that sexual harassment has come to be better understood. And I hope that some similar good may come out of our debate on the civil rights bill.

I hope that employers, their interest piqued by the real and imaginary consequences of this legislation, will give some attention to their hiring practices, their promotion practices, and their complaint procedures. I hope they will spend some time doing this, even if their only motivation is to guard against the dire and unfounded warnings of their trade association.

I hope that Congress will move on to the more important business of ensuring that more and more women and minorities are ready to take on jobs in the decades to come.

If ever there were a business necessity, it is that these nontraditional workers be ready to step into more and more demanding positions. Equal justice and economic imperatives demand nothing less.

I yield the floor and the remainder of my time.

The PRESIDING OFFICER. The Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, I rise in support of the Danforth-Kennedy-Dole amendment on civil rights. I am pleased we have been able to bridge the remaining gap toward a consensus on the civil rights bill.

From the very beginning, I have believed that the Supreme Court decisions which are the subject of this legislation should be reversed. I have also supported expanding the remedies available under title VII of the Civil Rights Act, particularly with respect to sexual harassment.

These are positions I have steadfastly maintained since this issue first arose 2 years ago. Yet I have also held firm to the view that, in restoring the law, we must be careful not to swing the pendulum too far in the other direction—to encourage more litigation rather than to reply on the courts only as an avenue of last resort.

When the Senate last debated this issue a year ago, I said I did not know whether the bill then considered would lead to hiring quotas. I now believe that, if this amendment is adopted, the issue can finally be put to rest. Employers will not be forced to adopt quotas in order to protect themselves.

Having been the subject of so much legal wrangling, the definition of business necessity is now left undefined. Instead of creating new legal terms in anticipation of every possible future circumstance, we have left the interpretation to the courts. While not ideal, this represents a significant improvement over earlier versions of the legislation.

For example, one version last year defined business necessity as "essential to effective job performance," a standard so difficult to prove employers might well have adopted quotas. By contrast, the legal effect of the amendment at hand will be much the same as the compromise language Senator GORTON and I offered last year.

However, there is much more to this legislation than the reversal of the Ward's Cove case. For the first time, we are opening virtually every employer in America to lawsuits for compensatory and punitive damages—including damages for pain and suffering—when they are accused of discrimination. I remain troubled by the potential consequences of this step, which Congress declined to take when it first enacted the Civil Rights Act in 1964.

As a practical matter, additional damages and jury trials will lead to further delays for legitimate victims of discrimination. Our Federal courts are already overburdened, and under the Speedy Trial Act, the backlog of criminal cases, by necessity, takes precedence. Civil jury trials, including title VII cases, are often dropped to the bottom of the docket.

Currently, I am told that it takes anywhere from 1 to 3 years to get to trial in Federal court, depending on the jurisdiction. Given these conditions, I have heard estimates that it may take 5 years or longer to complete a jury trial under this bill. Justice delayed, as we know, is justice denied.

Practical considerations aside, I also question whether these remedies will accomplish the goals we intend. I fear we may be creating false hopes among those who believe this legislation will provide new job opportunities for minorities, women, and other disadvantaged groups. In fact, the opposite may be true.

Right now, the vast majority of title VII cases are discriminatory firing suits. That is, more people sue to keep their jobs than to break down barriers for new jobs. According to a recent article in the Stanford Law Review, the number of such firing suits increases during periods of economic decline, as workers fight to hold on to their jobs.

From an economic perspective, by increasing damage awards, we increase the potential cost of hiring minorities and women in the eyes of employers. According to the authors, "Such suits actually provide employers with a disincentive—perhaps even a net disincentive—to hire minorities and women." I am afraid, particularly in these economic times, companies will react by hiring fewer employees, or simply moving elsewhere.

I hope this will not be the case. I also hope this legislation will not, by increasing the threat of litigation, heighten the tensions that already exist in the workplace. If next year we consider removing restrictions on damages altogether, perhaps at the same time we will look further into alternative means of dispute resolution or even direct our attention toward broader litigation reform.

Mr. President, let me commend Senator DOLE, Senator DANFORTH, and Senator KENNEDY, among others, for their tireless and good faith efforts toward reaching an agreement. As I said, this issue, in particular, has been the subject of an especially bitter and divisive debate. I am heartened by the fact that all sides were able to come together. My final hope is that the bipartisan spirit of cooperation, which this amendment represents, will continue in the days to come.

The PRESIDING OFFICER. The Chair wishes to apprise that the time of the Senator from Arizona has expired. The Senator from Massachusetts controls 5 minutes and 9 seconds.

Mr. KENNEDY. Mr. President, I yield to the Senator from Connecticut.

The PRESIDING OFFICER. The distinguished Senator from the State of Connecticut.

Mr. DODD. Madam President, I thank the Chair and I thank the distin-

guished floor manager of the legislation.

Madam President, I rise today in support of S. 1745, the Civil Rights Act of 1991. I want to commend my colleagues Senators DANFORTH and KENNEDY for their tireless efforts in bringing this bill to the floor and hopefully ensure all Americans that the U.S. Senate is dedicated to protecting the civil rights of all of our citizens.

I particularly commend Senator DANFORTH, Madam President, who has toiled literally for weeks on end to bring us to this point. When the history of this legislation is finally written and how it came to pass, there is no doubt in this Senator's mind that the senior Senator from Missouri will rightfully deserve tremendous credit for having reversed these earlier Supreme Court decisions which have set back the clock for those who are trying to guarantee their rights, particularly in the employment sector.

Clearly, one of the most important responsibilities of Government is the guarantee of freedom, equality, justice, and opportunity under the law. Racism and sexism are contrary, as we all know, to our basic ideals and have no place in this Nation. But the reality for all too many of our citizens has been otherwise.

Madam President, I strongly support this legislation because I believe it is Congress' duty to ensure that the rights of equality and opportunity remain steadfast in our law. Despite our best efforts to end the sanction of race and sex discrimination in the workplace, including passage of the 1964 Civil Rights Act and in particular title VII of that act, many of our fellow citizens, particularly those who are minority or female, have encountered obstacles rather than opportunity.

Congress has demonstrated its intent to guarantee equal rights in the workplace through the adoption of the Civil Rights Act of 1964, title VII of that act and section 1981 of the Civil Rights Act of 1866. When we passed the Fair Housing Acts, we thought we would rid this Nation of discrimination in housing. However, on October 21 of this year, the Fed announced the results of a study that showed that black and Hispanic mortgage loan applicants were two to three times as likely to be denied loan approval for home loans as white applicants. In my home State of Connecticut, the Institute for Social Inquiry at the University of Connecticut recently conducted a poll that found that 44 percent of women interviewed said they had been sexually harassed in the workplace.

Unquestionably, much progress has been made. But obviously, much work is left to be done. That is precisely why we are here today.

Despite the good intentions of past Congresses and Presidents, the Supreme Court in its 1989 term cast a shadow on this Nation's commitment to civil rights while reneging on our commitment to provide equal protection under the law. The decisions handed down by the Supreme Court, in five cases, stripped our historic civil rights laws of much of their enforceability. The Court's decisions have made it considerably more difficult for victims of discrimination and sexual harassment in the workplace to win their cases. As a result, millions of hard-working Americans have lost protection under section 1981 and title VII.

For example, in Wards Cove Packing Co. versus Atonio, the Supreme Court overturned an 18-year precedent set by the Griggs versus Duke Power Co. decision regarding the burden of proof in cases alleging discrimination based upon the disparate impact of business hiring of minorities.

Before the Wards Cove ruling, the Court had established a simple and logical rule, once the plaintiff had developed a prima facie case of discrimination, it was up to the defendant to prove that the hiring practices in question had a business necessity. The rule made perfect sense since such information in uniquely within the defendant's knowledge. Now, however, the Court expects the plaintiff to both develop the prima facie case and prove that a hiring practice was discriminatory and not a matter of business necessity.

By shifting the burden of proof from the defendant to the plaintiff, the Supreme Court made an already difficult task an impossible one for the plaintiff. The proof of that statement is clearly reflected in the fact that cases decided in favor of the plaintiff before Wards Cove have already been appealed and reversed in favor of the defendant.

Section 8 of the Civil Rights Act of 1991 restores the force and effect of the Griggs decision by reaffirming that the plaintiff, in order to prove his case, need only show that the hiring practices of the company in question were not job related to the position in question and consistent with business necessity or that there was a less discriminatory alternative to the hiring practice and the employer refused to adopt it.

Second, in Patterson versus McLean Union, the Supreme Court ruled that section 1881 of the Civil Rights Act of 1866 prohibits racial discrimination in hiring but not in posthiring employment. Section 4 of the Civil Rights Act of 1991 overturns Patterson and extends section 1981 coverage to on-the-job victims of racial discrimination, sexual harassment, and religious bigotry.

Third, in Martin versus Wilks, the Supreme Court's decision discourages the use of consent decrees to settle a job discrimination suit by allowing endless challenges to such decrees. Consent decrees have in the past worked to resolve many discrimination cases. However, as a result of this ruling, employers will not elect to enter into a consent decree if by resolving one problem they create another. To protect the use of consent decrees, section 11 of the Civil Rights Act of 1991 requires that notices be given to persons who may be adversely affected by a court order. An individual would be given a reasonable opportunity to challenge the court order after which time subsequent law suits would be barred.

Madam President, the events of the last several weeks have indeed opened our eyes to the plight of women in the workforce. As I previously indicated, in my State alone, 44 percent of women polled in a recent study reported being sexually harassed. I am happy to see we will pass a bill that begins to address this problem by putting real teeth in title VII of the Civil Rights Act of 1964.

I am also pleased to see that the Civil Rights Act of 1991 has addressed problems raised by the Court in the Price Waterhouse and Lorance decisions. In Price Waterhouse versus Hopkins, the Court ruled that an employment decisions motivated only in part by prejudice does not violate title VII if the employer can show that the same decision would have been made for nondiscriminatory reasons. S. 1745 overturns the Price Warehouse decision thus making any reliance on prejudice illegal.

In Lorance versus AT&T Technologies, the Court ruled that the statute of limitations for challenging discriminatory seniority plans begins to run when the plan is adopted rather than when the plan is applied to harm an employee. This ruling would bar most employees from bringing suit for discriminatory promotion practices. By overturning Lorance, the Civil Rights Act of 1991 would permit a person to challenge discriminatory employment practices when they harm them.

Those decisions represented an unprecedented retreat on the part of the Supreme Court from the enforcement of antidiscrimination laws. I, therefore, stand here today ready to pick up the ball where the Supreme Court dropped it and champion the causes of justice, equality, and opportunity for all Americans who only desire the chance to succeed and contribute to this great land.

The civil rights laws we are restoring prohibit discrimination on the basis of race, sex, color, and national origin and all other forms of illegal discrimination in the workplace. We as Americans have made it abundantly clear that we will not tolerate discriminatory treatment of others on the basis of race or sex. Because there is obviously great consensus on this principle, I must ask why is there opposition to the Civil Rights Act of 1991?

Chief among the opponents of this legislation, until just last week, was

the President who argued that the Civil Rights Act of 1991 went significantly beyond the original goals of equality, settlement, and reconciliation found in title VII and section 1981 and would cause employers to adopt surreptitious quotas or abandon legitimate hiring and promotion devices in order to protect themselves from the allegation of discriminatory hiring practices.

The President also charged that the Civil Rights Act of 1991 skewed the burden of proof so significantly toward the plaintiff in both disparate impact and treatment cases that defendants would never be able to defend against these cases.

And, finally, the President argued that if we award damages to women who are victims of discrimination or sexual harassment in the workplace we will encourage lawyers to counsel their clients to sue for damages rather than reconcile their differences with their employer, causing a litigation boom for lawyers but little progress for women in the workplace.

The President's acquiescence to minor changes in these three areas suggests that his problems have been more political than substantive. I believe all of these charges were never supported by the evidence. First, this bill is not and never was a quota bill. It merely restores the balance intended by the Griggs decision in employment discrimination suits; second, there is no evidence that indicates lawyers will be any more apt to bring these very difficult employment discrimination lawsuits; and finally, I believe there is no real difference between the sting of race discrimination and the sting of sex discrimination.

It makes good common sense to permit women to sue for damages when employers intentionally discriminate, especially when, currently, the only legal remedy is to put the woman right back into the hostile environment. This bill provides women with an alternative.

Madam President, I will conclude my remarks by saying that I supported in principle many of the amendments that have been offered throughout the consideration of this bill. Senator MCCONNELL's amendment on capping attorneys' fees and the Wirth-Durenberger amendment on uncapping damages, while desperately needed and ones that I philosophically support, would have made it virtually impossible to get a civil rights bill passed into law. I am happy to see that the Mitchell-Grassley compromise on congressional coverage has been attached to this bill. It is long overdue and one that I called for many years ago and would like to see become law.

I want to reiterate that I have supported every major piece of Federal civil rights legislation brought before Congress in my 16 years in Washington, including the extension of the Voting Rights Act, the Fair Housing Acts, the Grove City Act and bills creating the formation of the Civil Rights Commission.

Further, I have long expressed my support for laws designed to combat the evil of discrimination in public accommodations, housing, and the workplace. I believe that we must not forget the past no matter how painful. Because I believe that equality and opportunity are enduring hallmarks of this Nation, I think we must stop the erosion of these rights.

Madam President, I agree with the goal of the Civil Rights Act of 1991. And I strongly believe that it is imperative that we restore the full force and effectiveness of our Nation's civil rights laws to millions of minorities and women. The Supreme Court's decisions of the 1989 term have meant justice delayed. That is, in effect, 2 years of justice denied for millions of Americans. We cannot let this continue. I therefore stand ready to support and vote for S. 1745, the Civil Rights Act of 1991 and encourage all of my colleagues to do the same.

Mr. HARKIN. Madam President, I rise in support of S. 1745, the Civil Rights Act of 1991, as modified by Senator DANFORTH, Senator KENNEDY, and the administration.

S. 1745, as modified, is a good bill. It overturns several Supreme Court decisions that have cut back dramatically on the scope and effectiveness of civil rights protections. It expands and improves remedies to compensate victims of intentional gender discrimination, including sexual harassment. The bill also includes remedies to compensate people with disabilities for intentional discrimination under the Americans With Disabilities Act.

Is S. 1745 a perfect bill or the bill I would have crafted? No. For one thing, although the remedies for women and people with disabilities are an improvement over current law, I would have preferred that there be no cap on the amount of damages available to women and people with disabilities since we currently do not have caps for racial minorities under section 1981. Congress should not allow women and people with disabilities to be second-class citizens when it comes to remedying the effects of intentional discrimination. When the harm is the same, the available remedies should be parallel.

However, I support S. 1745 because on balance the positive aspects of the bill outweigh its shortcomings.

I am pleased President Bush finally accepted the civil rights bill. I only wish the President would have been willing to negotiate in good faith 2 years ago instead of stonewalling so he could use the quota strategy for short-term political gain. Pitting race against race is not only offensive, but it is bad for our country. I believe that Mr. Bush's handlers were sensing that the quota strategy was no longer paying political dividends. Whatever the reason, I am glad the compromise was reached. I just hope he will never use race again for shortsighted political ends.

We need a civil rights bill now because the unfortunate truth is that discrimination in the workplace is still pervasive in our country.

The serious problem of sexual harassment in the workplace gained heightened attention during the Thomas hearings. Under current law, there are no effective means of deterring such harassment. This is because under current law, women may not recover compensatory and punitive damages.

Ellen Vargyas of the National Women's Law Center framed the issue regarding the impact of sexual harassment and other forms of intentional gender discrimination as follows: "Who should bear the nonwage costs of intentional, illegal discrimination: the perpetrator of the discrimination or the victim? Under current title VII law, it is the victim."

Witness after witness in hearings in both the House and the Senate made the same point—under current law a woman can be the victim of "sustained, vicious, and brutal harassment" (see *Zabkowicz* v. *West Bend Co.*, 589 F. Supp. 780, 784 (E.D. Wis. 1984)), suffer serious emotional and other health problems, and still receive nothing more than limited back pay. The bill addresses this inequity.

Several recent reports document the disparities in earnings between Afro-Americans and white Americans and the continued prevalence of discrimination in the workplace.

In August 1991 the Bureau of the Census released a report entitled: "The Black Population in the United States: March 1990 and 1989." The wage gap between blacks and whites offers a painful illustration of the effects of discrimination in the workplace. Black men make 69 percent of the earnings of white men, $15,320 versus $22,160. Black women suffer from multiple discrimination. Black women receive only 52 percent of white men's earnings, $11,520 versus $22,160.

Unfortunately, the evidence is that a college education does not help close the gap between blacks and whites in any significant way. The Census Bureau report showed that white men with 4 years of college education had median earnings of $41,090; black men with comparable education had median earnings of only $31,380, 76 percent of the earnings of white men; and black women with a comparable education had median earnings of only $26,730, 65 percent of the earnings of white men.

A study by the Urban Institute on Discrimination in the Workplace concluded that job discrimination against black men is "widespread and en-

trenched." The study sent matched pairs of white and black men to compete for the same jobs—men with the same qualifications and similar abilities. The study found that white applicants were three times as likely to receive a job offer and almost three times as likely to advance in the hiring process.

Fifteen percent of the white applicants received job offers, compared to 5 percent of the blacks. In addition, white men advanced in the hiring process 20 percent of the time, compared to only 7 percent for black men.

Other findings of the study showed that black applicants were treated rudely or unfavorably in 50 percent of their employment efforts, while white men received unfavorable treatment in 27 percent of their job searches.

A second recent report indicates that the problem of discrimination is not limited to entry into the work force but also is prevalent in the area of promotions. On August 8, 1991, the Department of Labor released a report entitled: "Report of the Glass Ceiling." The report found that among 94 large employers analyzed by the Department, women were 37 percent of 147,000 employees and minorities were 16 percent. But only 17 percent of women and 6 percent of minorities held any management job, and only 6.6 percent of women and 2.6 percent of minorities were at the executive level. Minorities are working at lower levels in the corporate structure than women.

The report identified some of the barriers to advancement: the manner in which job openings are advertised or lack thereof; the use of executive search firms which often do not include women and minorities in those recommended; the lack of access for women and minorities to training and development programs; and a lack of knowledge at the top levels of corporations regarding equal employment opportunity responsibilities and evaluation.

All companies reviewed had different methods of developing personnel. But, according to Secretary Martin, "they all had one thing in common—they didn't make these opportunities as available to minorities and women."

These studies document the urgent need to enact a civil rights bill that sends the clear message that discrimination in the workplace will not be tolerated. S. 1745, as modified, will accomplish this objective.

I have been asked whether the compromise worked out with the administration weakens the Danforth bill. On reviewing the modifications, I am struck by the fact that the changes, including those relating to the so-called quota issue, are cosmetic rather than substantive in nature.

With respect to proving disparate impact discrimination, the modified version of S. 1745 accomplishes the very same purposes and includes the same policies that were included in last year's civil rights bill, this year's House version of the bill, and S. 1745, as originally introduced. The modified version of S. 1745 is not a quota bill, nor were any of its predecessors.

Numerous Republican Senators joined by Senate Democrats concluded that these bills were not quota bills. The Civil Rights Commission appointed by President Bush told us repeatedly that these bills were not quota bills. Religious organizations that traditionally oppose any bill that could be construed as requiring quotas, told us that these bills were not quota bills. The Business Roundtable told us that the House bill was not a quota bill.

All these individuals and groups were and are right. Every version of the civil rights bill was designed to accomplish the same objective—restore the policy in the Griggs decision and overturn the Wards Cove decision.

Let me explain why this is the case. In 1971 the Supreme Court handed down its unanimous decision in Griggs versus Duke Power. In Griggs the Court held that title VII requires "the removal of * * * unnecessary barriers to employment where the barriers operate invidiously to discriminate * * * the touchstone is business necessity." The Court also invalidated job qualification standards because they did not "bear a manifest relationship to the employment in question."

For 18 years the country lived under the Griggs standard and no one ever claimed that Griggs required quotas. In fact, during the debate over the civil rights bill, the administration consistently endorsed the Griggs standard and supported legislation to restore it.

In 1989, the Wards Cove decision overturned Griggs.

The intent of S. 1745 was to restore the protections that existed prior to Wards Cove by reinstating the Griggs rule. Senator DANFORTH accomplished this by using language from the Griggs case and by using language from the recently enacted Americans with Disabilities Act.

The ADA is landmark civil rights legislation designed to ensure equal opportunity for people with disabilities. I am proud to have been the chief sponsor of the ADA.

The ADA and its accompanying legislative and regulatory history embrace Griggs and reject Wards Cove. This point is clear from the language included in the legislation, the legislative history accompanying the ADA, and recently reaffirmed in the conference report accompanying the Civil Rights Act of 1990 (H. Conf. Rpt. No. 101–856 at page 20).

Specifically, the ADA states that discrimination includes "using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity."

The language included in the ADA is an amalgam of three sets of regulations implementing sections 501, 503, and 504 of the Rehabilitation Act of 1973 and court cases such as *Prewitt* v. *U.S. Postal Service*, 662 F.2d 292, 308 (5th Cir. 1981).

The basis for the regulations and the court decisions is the Griggs decision. When the then Department of Health, Education, and Welfare issued the first set of regulations implementing section 504, it explained that the requirement that selection criteria must be job-related "is an application of the principle established under title VII of the Civil Rights Act of 1964 in Griggs versus Duke Power Company."

The Prewitt case, which is cited to in the House Judiciary report accompanying the ADA, states that "the EEOC regulations [implementing section 501 of the Rehabilitation Act] adopt a Griggs-type approach in the disparate impact handicap discrimination context."

The analysis prepared by the EEOC accompanying the final regulations implementing title I of the ADA correctly states that the "concept of 'business necessity' has the same meaning as the concept of 'business necessity' under section 504 of the Rehabilitation Act of 1973."

S. 1745, as originally introduced, included the language from the ADA and the Griggs decision. It stated that: "The term 'required by business necessity' means in the case of employment practices that are used as qualification standards, employment tests, or other selection criteria, the challenged practice must bear a manifest relationship to the employment in question."

Under the compromise, an unlawful employment practice based on disparate impact is established if a complaining party demonstrates that an employer uses a particular employment practice that causes a disparate impact and the employer fails to demonstrate that the challenged practice is "job related for the position in question and consistent with business necessity." This is the language from the ADA.

The compromise deletes the definition of the term "business necessity" ("manifest relationship to the employment in question", which comes directly from the Griggs case). Instead, the legislation specifies that the purpose of the act is to "codify the concepts of 'business necessity' and 'job-related' enunciated by the Supreme Court in *Griggs* v. *Duke Power Company*, 401 U.S. 424 (1971) and in the other Supreme Court decisions prior to *Wards*

Cove Packing Co. v. *Atonio*, 490 U.S. 642 (1989)."

In sum, instead of specifically incorporating the language from Griggs in the definition of "business necessity", the compromise incorporates the concepts of Griggs. This is a cosmetic change that has no substantive significance.

With respect to disparate impact discrimination, when S. 1745 becomes law, title VII and the ADA will be parallel to the same extent that title VII and section 504 where parallel prior to Wards Cove. I use the modifier "to the same extent" because the method of proving disparate impact under ADA and section 504 may differ in certain circumstances from title VII with respect to the use of statistics. As noted in the analysis to the final regulations under section 504, because the small number of disabled persons taking tests may make statistically showings of disparate impact difficult, "once it is shown that an employment test substantially limits the opportunities of handicapped persons, the employer must show the test to be job-related." 42 Fed. Reg. 22688,89 (May 4, 1977).

In sum, none of the civil rights bills were quota bills. They all had the same intent—to restore the standards in Griggs. The American people are probably asking themselves why the President characterized the previous civil rights bills, including S. 1745, as introduced, as quota bills when they simply reinstated the Griggs rule and no one ever raised the quota argument under Griggs?

The initial decision by President Bush and his handlers to raise the specter of quotas is not a new political ploy. The same strategy was used back in 1964 during the debate on the historic Civil Rights Act of 1964.

In the course of the debate Senator Hubert Humphrey, the floor manager of the bill, stated: "The bill cannot be attacked on its merits. Instead, bogeymen and hobgoblins [such as quotas] have been raised to frighten well-meaning Americans."

Mr. Bush and his handlers used quotas in 1990 and 1991 to frighten well-meaning Americans, in much the same way he frightened Texans when he opposed the civil rights bill of 1964 during his campaign for the Senate. This very same strategy is now the centerpiece of the David Duke campaign in Louisiana.

I find this strategy morally offensive. And I am pleased to note that several other Senators from both sides of the aisle agree with me.

I believe that using race for short-term political gain is bad for our country. Pitting race against race and sex against sex does not make America stronger; nor does it make us more competitive in the international arena. Using race as a wedge issue saps our collective will to improve our Nation's economic and social well being and to hire and promote the best and the brightest.

When I was growing up in a small town in Iowa, I remember starting each school day by reciting the "Pledge of Allegiance." "I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all."

In my town, these words rang true. We always thought of ourselves as one nation, one community, and one extended family.

The role of the President is to find ways to bring the American family together, not to divide us for political gain.

We are one extended family.

We find our strength in our diversity.

We do not pit one American against another American.

We give each member of our family an opportunity to maximize his or her potential. When arbitrary barriers get in the way, we work together to remove them. When one member of the family succeeds, the whole family is proud.

This is my vision of the American family.

To this point, my remarks have focused on the need for enacting this bill and the quota red-herring. The remainder of my time will focus on the relationship between S. 1745 and the ADA.

I am pleased that the managers of the bill recognized that the applicable sections of the Civil Rights Act of 1991 should be applied consistently to the ADA. Section 5 of S. 1745 provides that an unlawful employment practice is established when a plaintiff demonstrates that a protected class status was a motivating factor for an employment practice. This policy is comparable to the standard already adopted under the ADA. (See for example, Sen. Rpt. No. 101–116 at page 45; H. Rpt. No. 101–485, Part 2, at 85–86.)

Other sections of the Civil Rights Act of 1991, which amend section 706 of title VII, are explicitly incorporated into the ADA through section 107(a) of the ADA.

Section 5 of S. 1745 states explicitly that damages are available under the ADA for all cases of unlawful intentional discrimination; that is, not an employment practice that is unlawful because of its disparate impact, or for violations of the reasonable accommodation provision in section 102(b)(5) of the ADA.

Causes of action for disparate impact are limited to section 102(b)(3)(A) and part of section 102(b)(6) of the ADA except for practices intended to screen out individuals with disabilities.

Section 1977A(a)(3) provides that damages are not available if the covered entity demonstrates good faith efforts, in consultation with the person with the disability who has informed the covered entity that accommodation is needed, to identify and make a reasonable accommodation that would provide such individual with an equally effective opportunity and would not cause an undue hardship on the operation of the business.

As the chief drafter of this provision, it is my intent that a demonstration of good faith efforts must include objective evidence that the process of determining the appropriate reasonable accommodation has been conscientiously complied with by the covered entity. This process is described in the Senate report accompanying the ADA (S. Rpt. 101–116) at pages 34–35 and the analysis accompanying the final regulations implementing title I of the ADA promulgated by the EEOC (56 Fed. Reg. 35748–49 (July 26, 1991)).

The legal mandate that the reasonable accommodation provides the individual with a disability an "equally effective opportunity" means an opportunity to attain the same level of performance, or to enjoy the same level of benefits and privileges of employment as are available to the average similarly situated employee without a disability. (See analysis by the EEOC accompanying the regulation implementing title I of the ADA (56 Fed. Reg. 35748 (July 26, 1991)).

In closing, the Civil Rights Act of 1991 codifies simple justice. It will help make the promise of "liberty and justice for all" a reality for all Americans.

I am proud to be a cosponsor of S. 1745 and I urge my colleagues to vote for passage without weakening amendments.

The PRESIDING OFFICER. The Chair apprises the managers of the bill that all time has expired on this amendment.

Mr. HATCH. Madam President, I urge adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the McCain amendment.

The amendment (No. 1293) was agreed to.

Mr. HATCH. Madam President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Several Senators addressed the Chair.

Mr. SYMMS. Madam President, who controls the time?

The PRESIDING OFFICER. The managers of the bill.

Mr. HATCH. Madam President, I believe the Senator from Idaho would like to ask unanimous consent to take 3 minutes.

Mr. SYMMS. I ask unanimous consent that I might have 2 minutes to speak on the bill.

Mr. HATCH. In addition to the time we have left on the bill.

The PRESIDING OFFICER. Without objection, the Senator may proceed.

Mr. SYMMS. I thank the distinguished Chair.

I will just briefly state that I will be voting against this bill, and I will do so with heavy heart because I know that many of my colleagues have worked at great lengths to achieve the compromise legislation that is before the Senate today.

I think some explanation needs to be stated that when Washington, DC, finally reaches a compromise, what that really means to the small business people in America, to the workers in America, to the taxpayers in America, is: "here they go again in Washington." Now it is going to be harder to do business, more difficult to show a bottom line, more difficult to have capital invested in this country and, overall, more difficult to maintain our sense of competitiveness,

We have worked long and hard in this country, Madam President, to reach the place that we are at today. Yet, what this bill will do, no matter what is said about it, is that it will place more burdens on the backs of the American people, more bureaucracy, and more risks. They will not only be held liable for backpay and allowances to people, but they will be held liable to add substantial payments for damages if they are assessed against them.

So it is small wonder sometimes, Madam President, as I look at the political situation, to see how we seem to have a shrinking number of those of us on this side of the aisle. When I hear the responses from the majority leader and from the chairman of the committee, Senator KENNEDY and others, that when the President finally did agree to a compromise, it is as though, well, they finally saw the light, and it is reported that way to the bulk of the American people outside the beltway.

Small business is the backbone of America. It hires the people who work, live, and produce in this country and they look upon Washington, DC, with great dismay. They have seen us increase their taxes since 1988. They have seen minimum wages go up since 1988. They have seen a $40 billion, $50 billion per year Clean Air Act passed since 1988, and now they see this added to it, along with more and more regulations, more taxes. And on top of it, they see their Government borrowing $1 billion a day and they wonder when the end is coming. When will the people in Washington wake up and recognize that what is needed to better race relations in America are good jobs, good economic opportunities and a good workplace.

So, as I say, I am not happy about being put in a position to have to vote in opposition to this bill, but I would prefer to see the law have stayed the same.

This is a very complicated piece of legislation. I know my friend from Missouri and others have worked tirelessly to achieve this point. But I think in the end what will happen is it is going to be a tougher place to do business. The deficit will get a little bigger. In addition to the Clean Air Act, in addition to new OSHA inspectors running around the country fining people so they can raise revenue to meet the budget deficit of last year, they have to see a continuation of bigger and bigger Government with which to deal.

Mr. President, through the years I have served in this Senate, I have tried to live by the well-worn, much-abused cliche: "If it ain't broke, don't fix it." For this reason I must oppose the so-called compromise.

S. 1745 seeks to overturn several recent Supreme Court decisions affecting the way civil rights are handled in our courts. Wards Cove Packing Co. versus Atonio is the decision that has attracted the lion's share of public attention. In Wards Cove, the Court ruled that a plaintiff must do more than merely show a statistical disparity in order to claim discrimination. It also allowed defendants to claim a business necessity defense.

The compromise also overturns Price Waterhouse versus Hopkins, which states that an employer can avoid a discrimination suit if the plaintiff would not have been picked for the job absent the discrimination.

I believe these decisions to be moderate and based on sound principles. They simply seek to ensure a sense of balance and common sense in our civil rights laws. These decisions are wholly consistent with the legislative intent of relevant civil rights laws and with the Constitution's guarantees, and should not be overturned.

Mr. President, the American worker today is protected from civil rights abuses by 20 years of court precedent. The Equal Employment Opportunity Commission takes the lead in protecting civil rights under title VII of the Civil Rights Act of 1964. In the past 10 years, the EEOC has dramatically increased the number of complaints and lawsuits filed. It has more than doubled the level of damages collected over previous years. These are hardly the figures of a civil rights system under fire, hardly the sign of a system that will collapse without this legislation, as some here would have us believe. Clearly the system works.

Yet, this legislation will throw these precedents and working systems out the window. Established precedent will be replaced by untested standards. The EEOC's method of redress will be replaced by a tort system with huge damage awards. I fail to see the need or the wisdom in doing this.

Currently, there are incentives in place for a quick settlement. This system enables the employee to seek redress and get back to work. But under S. 1745, huge monetary award amounts are encouraged through jury trials, eliminating any incentive for the plaintiff and defendant to settle early. And with legal and expert fees allowed, there is no incentive for the lawyer to settle either. So, what we have here is an invitation to long, drawn out court battles over huge stakes, replacing the current system of solving the problem and getting people back to work.

I also question the wisdom of substituting title VII's current structure with tort law. The tort system is infamous for its snail pace and unfairness. It is irresponsible for us to complain about the backlog in the Federal courts and add to it unnecessarily at the same time. If our crime bill works, as I hope and prey it does, our courts will be inundated with new criminal cases while our streets are being cleaned up.

The April 1990 Report of the Federal Courts Study Commission stated that the "recent surge of Federal criminal trials * * * is preventing Federal judges in major metropolitan areas from scheduling civil trials, especially civil jury trials, of which there is a rapidly growing backlog." In such an environment, it is questionable at best to replace the working title VII structure with one that will significantly increase jury trials and litigation.

Another provision of this bill which is totally unprecedented and quite troubling is section 11, which prevents constitutional challenges to discrimination which results from civil rights judgments. Put simply, reverse discrimination cases are virtually outlawed.

This provision strikes at the very heart of the motto "Every man can have his day in court." People who may be harmed by a decision, people whose civil rights are violated because of someone else's actions, have no recourse. They are bound by a decision in which they had no voice, but which affects them drastically.

If this legislation passes, an employer can say to an honest American worker, "I don't care if you're qualified. I don't care if you are more qualified than the next guy. Because of the color of your skin, you cannot work here. And there is nothing legally you can do about it."

That is ugly. That is wrong. It violates the very premise of civil rights. As Justice Brennan wrote, "The goal of title VII was not some socially acceptable 'bottom line' but rather fair employment opportunities for each and every individual."

This is a very sensitive issue. People in our country are worried that their rights will be denied by such court action. Many feel their jobs are on the line. Reverse discrimination is an area where precedent is still being established, the limits to rights are still being explored. It is wrong for Congress to step in and make such cases impos-

sible before the courts have had a chance to fairly settle the issue.

This compromise would also destroy the commonsense balance between civil rights and business interests which Wards Cove established. The compromise proposal states that a practice must be "job related for the position in question and consistent with business necessity" to be legal. I agree with Wards Cove in saying this is too restrictive.

This bill is telling the people of our Nation that education and skills beyond the bare necessity for completing a job are unimportant. An employer would be prohibited from taking them into consideration.

Writing on this subject, Secretary of Education Lamar Alexander pointed out that our global competitiveness depends on a better educated work force. Workers must have the skills to adapt to a rapidly changing work environment. He wrote that in spite of global economic reality, legislation such as this "appears to say that employers will not be able to require entry-level employees to have the skills and knowledge necessary to perform functions other than those required by the exact job for which they are being considered. In effect, the bill seems to require that employers hire as if every job is a changeless and dead-end job."

What Wards Cove seeks to do, and what American business needs, is to establish a balanced approach to civil rights where business can obtain a qualified and flexible work force and rights are protected at the same time.

Civil rights are protected in this country. Workable remedies are available for those whose rights are denied. The legal area of civil rights continues to grow on its 20 years of precedent and evolve to meet the civil rights needs of this Nation.

New legislation is unnecessary and will have a dramatic impact on the effectiveness of our court system. Once again, "if it ain't broke, don't fix it."

I yield the floor.

Mr. HATCH addressed the Chair.

Mr. KENNEDY. Madam President, I ask unanimous consent that the Senator from Washington be recognized for 6 minutes outside of the agreed times.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ADAMS. Madam President, I intend to vote in favor of the Danforth-Kennedy substitute civil rights bill. I am disappointed that this bill contains flaws that will need to be addressed at a future date. Frankly, this bill is better than having no bill at all, but it could have been much better.

We passed a much better civil rights bill with bipartisan support in both Houses last year. We came within one vote of overriding the President's veto.

The current compromise version is the best we are going to get this year. Those of us who believe in our hearts that civil rights remain the great unfinished agenda in our society will be back to fight on at a later date.

During these recent weeks of negotiations with the White House, I have on several occasions reflected on that day when we came within one vote of passing that better effort at restoring civil rights standards eroded by recent Supreme Court decisions. David Duke, the former grand wizard of the Ku Klux Klan, sat smirking in the gallery above this floor on the day we failed to put the divisive politics of race behind us. Now Mr. Duke stands nominated as the candidate of the Republican Party for the governorship of Louisiana. And while President Bush has finally stopped shouting "quota" whenever the subject of a civil rights bill is raised, Mr. Duke is still reading from last year's script. Some have suggested that David Duke's political success helped convince Mr. Bush's advisors that it was time to get serious about passing civil rights legislation this year. Whatever the cause, President Bush finally came to the table, and this bill is the result.

I am extremely disappointed that the bill falls short in redressing discrimination against women. The bill says that discrimination on the basis of sex is less important than other forms of discrimination.

Under this bill, women of color would be forced to abandon their sex discrimination claims and use claims based on race or national origin to bypass the caps on damages.

Under this bill, compensation for damages as a result of sexual harassment or discrimination are capped.

By capping damages, we relegate women's discrimination cases to second class status in the American legal system. Just imagine the howl of anguish from the business community if we sought to cap damages a corporation could recover in civil litigation.

There will come a day when this institution recognizes that sexual harassment cases should be taken as seriously as corporate litigation. An administration that professes its concern about the glass ceiling that prevents women from advancing in their careers should not be insisting on legislation to limit a woman's right to be fully compensated in a successful lawsuit.

I will be an original cosponsor of the effort to remove the caps on damages for sexual harassment cases. If the President vetos that bill, he can spend some of his domestic travel time in 1992 explaining why plaintiffs in sexual harassment cases don't deserve full access to the courthouse.

Madam President, the overwhelming majority of my colleagues who have expressed their support for this compromise stated that we will return the burden of proof in discrimination cases to the standard enunciated in Griggs versus Duke Power Co. Both the findings and the purposes sections of the bill suggest that to be the case.

I find it troubling to read in the final sentence of this substitute bill the following language:

> Notwithstanding any other provision of this act, nothing in this act shall apply to any disparate impact case for which a complaint was filed before March 1, 1975, and for which an initial decision was rendered after October 30, 1983.

This little amendment represents special interest legislating at its worst.

And who is the beneficiary of this inside deal? There is only one disparate impact case that meets this definition: Wards Cove Packing Co. versus Atonio. So we are legislating a return to the Griggs standard for every case except Wards Cove. Is that fair? It most certainly is not.

This bit of legislative mischief is proof that the Wards Cove Packing Co. has friends in high places. For the past 2 years, Wards Cove had its lobbyists at work pushing this amendment. Now the corporate interest is legislatively protected at the expense of the individuals who brought the case.

Yesterday, I received a letter from Frank Atonio, one of those original plaintiffs. Mr. Atonio states:

> Like other nonwhites at Wards Cove Packing Co., I worked in racially segregated jobs, was housed in racially segregated bunkhouses and was fed in racially segregated mess halls. A number of us brought the case to redress the injury caused by racial discrimination. But we now see the original injury compounded by a new injury—one caused by a special exemption obviously designed to make it hard for us to redress the racial discrimination.

He goes on to ask:

> I do not see how a law which was designed to overturn the Supreme Court decision in our case can exclude only our case from coverage. I would appreciate your asking the sponsors, both Republican and Democrat, how they can justify this special exemption.

Madam President, I do not have a good explanation for Frank Atonio and the other Wards Cove plaintiffs. I would certainly welcome hearing from any other Member of the Senate who does.

Unlike Wards Cove Packing Co., Frank Atonio did not have the money to hire a Washington, DC, lobbyist to look out for his interests. But I feel compelled to speak today on his behalf, and I ask unanimous consent that his letter, and an accompanying letter from the attorney who has handled the case over all these years be placed in the RECORD following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. ADAMS. It is my hope that our colleagues in the other body will take a close look at the one sentence that turns the Civil Rights Act of 1991 into the Wards Cove Relief Act. I hope they will insist that section 22(b) be deleted in conference. Wards Cove Packing Co.

should play by the same rules as every other litigant under the law we are passing today. In my view, that is what equal justice under law is all about.

I thank the Chairman.

EXHIBIT 1

OCTOBER 28, 1991.

Re Danforth-Kennedy Civil Rights Act of 1991.

Senator BROCK ADAMS,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR ADAMS: I am the Frank Atonio of Wards Cove Packing Co. v. Atonio.

I am writing out of a deep concern about a section in the Civil Rights Act of 1991 which excludes our case from coverage.

It says the Act shall not apply "to any disparate impact case for which a complaint was filed before March 1, 1975 and for which an initial decision was rendered after October 30, 1983."

I am told no other case in the country besides ours meets these criteria, so no other case in the country is excluded from coverage.

I am told this provision was added at the insistence of Senators Murkowski and Stevens, the two senators from Alaska where Wards Cove Packing Company has its operations. I am also told Wards Cove Packing Company has done a great deal of lobbying in Washington, D.C. to get this provision.

Like other non-whites at Wards Cove Packing Company, I worked in racially segregated jobs, was housed in racially segregated bunkhouses and was fed in racially segregated messhalls. A number of us brought the case to redress the injury caused by racial discrimination. But we now see the original injury compounded by a new injury—one caused by a special exemption obviously designed to make it hard for us redress the racial discrimination.

The Civil Rights Act of 1991 was drafted inpart to overrule the Supreme Court decision in our case. It says,

The Congress finds that—

* * * * *

(2) the decision of the Supreme Court in Wards Cove Packing Company v. Atonio, 490 U.S. 624 (1989) has weakened the scope and effectiveness of Federal civil rights protections. . . .

* * * * *

The purposes of this Act are—

* * * * *

(2) to codify the concepts of "business necessity" and "job relatedness" enunciated by the Supreme Court in Griggs v. Duke Power Co., 401 U.S. 424 (1971), and the other Supreme Court decisions prior to Wards Cove Packing Company v. Atonio, 490 U.S. 642 (1989).

I do not see how a law which was designed to overturn the Supreme Court decision in our case can exclude only our case from coverage. I would appreciate your asking the sponsors (both Republican and Democratic) how they can justify this special exemption.

We have been fighting our case for seventeen and one half years. It was nearing a conclusion when the Supreme Court decided to use it to overturn well established law. We now see new roadblocks raised, which place a just resolution farther in the future.

Few workers in the country are as economically disadvantaged as non-white migrant, seasonal workers, a group which comprises the class in our case. Yet the special exemption in the bill will now make it harder for us than anyone else to prove discrimination against our former employer.

I would appreciate your doing everything in your power to fight this provision.

Yours truly,

FRANK (PETERS) ATONIO.

NORTHWEST LABOR AND EMPLOYMENT LAW OFFICE,
Seattle, WA, October 28, 1991.

Re Danforth-Kennedy Civil Rights Act of 1991.

Senator BROCK ADAMS,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR ADAMS: I am an attorney for the plaintiffs in Wards Cove Packing Co. v. Atonio.

I am writing about §22(b) of the pending Civil Rights Act of 1991, which reads, "Notwithstanding any other provision of this Act, nothing in this Act shall apply to any disparate impact case for which a complaint was filed before March 1, 1975 and for which an initial decision was rendered after October 30, 1983."

The clear aim of this provision is to exclude Wards Cove from coverage, despite the fact the bill was designed in part to overrule the Supreme Court decision in Wards Cove.

The provision apparently has its genesis in an amendment Senator Murkowski offered to the Civil Rights Act of 1990. He wrote at the time:

"During Senate consideration of S. 2104, the Civil Rights Act of 1990, I intend to offer an amendment that will inject a much needed element of fairness into the bill.

"As presently drafted, Section 15 of S. 2104 would apply retroactively to all cases pending on June 5, 1990, regardless of the age of the case. My amendment will limit the retroactive application of S. 2104 to disparate impact cases for which a complaint was filed after March 1, 1975.

"To the best of my knowledge, Wards Cove Packing v. Antonio is the only case that falls within this classification." (Emphasis added.)

For your convenience, I am attaching a copy of Senator Murkowski's July 11, 1990 letter to his colleagues.

Similarly, a question and answer sheet Senator Murkowski circulated at the time says:

Q. Why does the amendment use a March 1, 1975 date?

A. *The date is keyed to the date the final complaint was filed in the Wards Cove case.* (Emphasis added.)

For your convenience, I am attaching a copy of the question and answer sheet.

Senator Murkowski later added the words "and for which an initial decision was rendered after October 30, 1983" to the amendment to ensure only Wards Cove would be affected. The initial decision on the merits after trial in Wards Cove was filed on November 4, 1983.

Clearly, the provision operates as a piece of special legislation for Wards Cove Packing Company, a firm which apparently financed a wide-scale lobbying effort for the provision.

I have three principal concerns about this provision.

First, the provision undermines precisely the ideas of fairness and equality the civil rights bill is at least partially intended to restore. It tells people an act designed to ensure evenhanded treatment can still be bent for the benefit of special interests.

Even if the civil rights bill could accommodate special rules for individual employers, Wards Cove Packing Company would be a poor candidate for such special treatment.

The Alaska salmon canning industry has had a long history of racial discrimination. Wards Cove Packing Company itself has received some of the sharpest criticism from individual Supreme Court justices in any discrimination case in memory.

Justice Stevens, writing in dissent for four justices in the case, wrote:

"Some characteristics of the Alaska salmon industry described in this litigation—in particular, the segregation of housing and dining facilities and the stratification of jobs along racial and ethnic lines—*bear an unsettling resemblance to aspects of a plantation economy.*" *Wards Cove Packing Co.* v. *Atonio*, 490 U.S. 644 n. 4 (1989). (Emphasis added.)

Similarly, Justice Blackmun, wrote:

"The salmon industry as described by this record *takes us back to a kind of overt and institutionalized discrimination we have not dealt with in years: a total residential and work environment organized on principles of racial stratification and segregation* * * *. This industry has long been characterized by a taste for discrimination of the old-fashioned sort: a preference for hiring nonwhites to fill its lowest-level positions, on the condition that they stay there." *Id.* at 662. (Emphasis added.)

The Court of Appeals also found Wards Cove Packing Company's practices vulnerable to challenge under Title VII, writing,

"Race labelling is pervasive at the salmon canneries, where 'Filipinos' work with the 'Iron Chink' before retiring to their 'Flip bunkhouse.'" *Atonio* v. *Wards Cove Packing Co.*, 827 F.2d 439, 447 (9th Cir. 1987). And other lawsuits involving racial discrimination in the Alaska salmon industry have resulted in broad findings of liability.[1]

Placing Wards Cove Packing Company beyond the reach of the civil rights bill would be an affront to the minority workers—many from Washington—whom the Alaska salmon industry has long confined to menial and low paying jobs.

Second, Wards Cove is an ongoing case which ought not be decided on the basis of special legislation urged by an individual employer. An appeal in the case is currently pending before the Ninth Circuit.

When the case is finally decided, it should be decided on the same rules which apply to other cases.

The civil rights bill—including the disparate impact section—was designed to at least partially restore civil rights law to the settled condition it held for years before the Supreme Court's October 1988 term. Given the concern for continuity, an amendment which would permit a special exemption for only one case is markedly out of place.

I am told Wards Cove Packing Company based much of its lobbying effort on the fact it has spent large sums in defending the case. But these costs are being largely defrayed by insurers, whose liability for them is a matter of public record.

Third, the provision raises grave constitutional questions. Because it represents an effort by legislators to dictate the outcome of a single case by exempting the case from rules of general application, it violates the separation of powers. Because it singles out the Wards Cove plaintiffs for disfavored treatment without any overriding governmental interest, it is vulnerable to an equal protection challenge. And it implicates some of the concerns which underlie the prohibition against bills of attainder.

I would appreciate any efforts you can make to ensure this provision is deleted from the civil rights bill.

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[1] *Domingo* v. *New England Fish Co.*, 727 F.2d 1429 (9th Cir. 1984), *modified*, 742 F.2d 520 (1984); *Carpenter* v. *Nefco-Fidalgo Packing Co.*, C74-407R (W.D. Wash. May 20, 1982) (order on liability).

Thank you for your attention to this.

Yours very truly,

ABRAHAM A. ARDITI.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER (Mr. LIEBERMAN). The Senator from Utah.

Mr. HATCH. I thank the Chair. I ask unanimous consent that the distinguished Senator from Rhode Island be granted 5 minutes and then we go into the last 30 minutes before the vote.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Mr. President, we still have to deal with the technical amendments before we go into the 30 minutes.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, it is with considerable relief, and a considerable sense of hope, that I and the other sponsors of S. 1745 see this legislation come before the Senate.

In 1989 the Supreme Court handed down a series of decisions interpreting employment discrimination statutes in what might at best be described as a stingy, cramped manner. At worst the Court threw logic and precedent out the window.

These decisions, as has been noted by most involved in this debate, turn on the very technical, very dry, and not-very-exciting terms and tools used in employment discrimination cases.

It is not the stuff that makes hearts pound. I think we all recognize that. But, nonetheless, these technical points that seem to be no more than an exercise in semantics are very important in ensuring that employees receive fair opportunity and fair treatment in the workplace, and fairness in the workplace is important to all Americans.

Last year, the Senate attempted to change the Court's decisions through civil rights legislation. I supported that. But after a year, that effort broke down amidst a great deal of hard feelings.

Thus, back in October 1990, after the veto override vote in the 1990 Civil Rights Act, the group of those you might call moderate Republicans who voted to override the veto were not in a very cheery mood. So about seven Senators put our heads together last November and thought about crafting a bill that might navigate the rocks and shoals of the legislative process, one that might not be everything to everyone, but one that might become law, thus repairing the damage done by the Court in its 1989 employment discrimination decision.

After much negotiation, this has culminated in the bill before us today. I agree with my friend and colleague, Senator DANFORTH, when he says that race is one issue that we must not allow to divide our Nation. Discrimination based upon race or gender or religion is arguably not the same as it was in the fifties and the sixties. I think we do recognize the discrimination still exists, but in many ways, this discrimination is far more subtle, far more difficult to define.

These forms of discrimination are just as serious as the old version. And we should address them. But not from any political party's point of view, and they should not be used for political gain.

There are many to credit for the compromise we have reached. One of the three individuals is clearly Senator DANFORTH. He has been the moving force behind this effort. The respect accorded to him was shown in the amount of attention that this bill has gotten right from the start.

Another individual is Senator KENNEDY. He has acted in great good faith throughout these discussions. He did not have to do so. I know there are provisions in this bill that he might not have crafted in the same way.

The third individual who deserves credit is the President. I am not talking about the administration, some undefinable group. But I am talking about the President of the United States, George Bush. He said from Day 1 that he wanted a bill, and he struck to his pledge. He did not have to countenance this bill, but he has done so, apparently against the wishes of some of his advisers.

Also, I think the group that helped move this along, the so-called moderate Republicans, deserve some measure of credit, and obvisouly they have done this with great help from both sides.

So in closing, Mr. President, I am delighted that today we are crossing this barrier, crossing the Rubicon, and I am delighted that this bill's passage is coming to pass.

I want to thank the Chair.

Mr. HATCH. Mr. President, I have time to take care of some of these technical amendments.

AMENDMENT NO. 1294 TO AMENDMENT NO. 1274

Mr. HATCH. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH], for Mr. JEFFORDS, for himself, Mr. MITCHELL, and Mr. DOLE, proposes an amendment numbered 1294.

Mr. HATCH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place insert the following:

SEC. .—Section 1205 of Public Law 101-628 is amended in subsection (a) by.

(1) striking "Three" in paragraph (4) and inserting "Four" in lieu thereof; and

(2) striking "Three" in paragraph (5) and inserting "Four" in lieu thereof.

Mr. HATCH. Mr. President, this is an amendment for and on behalf of Senator JEFFORDS, and it is a technical amendment that we are adding to the bill at this time. It has been cleared on both sides, to the best of my knowledge.

Mr. JEFFORDS. Mr. President, the purpose of this amendment is to amend the Civil War Sites Study Act of 1990 to provide for the appointment of two additional members to the Civil War Sites Advisory Commission authorized pursuant to section 1205 et seq. of the act. (Public Law 101-628, 16 U.S.C. 1a-5 note). This corrects an oversight in the appointment authority of the original legislation establishing the Commission. The amendment is technical and noncontroversial, and I move its adoption.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1294) was agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. KENNEDY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1295

(Purpose: To clarify that the limitation on damages for intentional employment discrimination applies with respect to each complaining party)

Mr. HATCH. Mr. President, I send an amendment to the desk on behalf of myself, Senator KENNEDY, and Senator DANFORTH, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH], for himself, Mr. KENNEDY, and Mr. DANFORTH, proposes an amendment numbered 1295.

Mr. HATCH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 6, line 14, insert ", for each complaining party" after "exceed".

Mr. HATCH. Mr. President, this is a technical amendment to clarify one of the aspects of the bill with regard to complaining parties that we think clarifies the bill appropriately.

It has been cleared by both sides. I believe it is acceptable to all concerned.

Mr. KENNEDY. Mr. President, this amendment is designed to make clear that the limitations on damage contained in section 5 apply to each complaining party, not to all parties in a single case.

The amount of damages that a victim can recover should not depend on whether that victim files her own lawsuit or joins with other similarly situated victims in a single case. Rather, the amount of damages should depend

on the injury the victim has suffered, subject to the caps. This amendment ensures that the remedy provided in the substitute is available to each individual who has been subjected to abuse.

I urge my colleagues to vote in favor of the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If there is no further debate on the amendment, the question is on agreeing to the amendment.

The amendment (No. 1295) was agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. KENNEDY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATCH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS-CONSENT REQUEST

Mr. KENNEDY. Mr. President, I have a unanimous-consent request that I am going to make on behalf of the majority leader. I understand that this request is not objected to by the minority.

Mr. President, I ask unanimous consent that immediately following the final disposition of S. 1745, the Finance Committee be discharged from further consideration of Senate Resolution 201, to express the sense of the Senate regarding the enforcement of the oilseeds GATT panel ruling against the European Community, and that the Senate proceed to its immediate consideration; that no amendments be in order to the resolution; that there be 20 minutes equally divided and controlled in the usual form between Senator DANFORTH and a designee of the majority leader; and that the rollcall vote which will be requested be stacked to occur immediately following the first rollcall vote that is taken in consideration of the conference report to accompany the Interior appropriations bill.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, I now ask unanimous consent that it be in order to request the yeas and nays on the adoption of the resolution.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

CIVIL RIGHTS ACT OF 1991

The Senate continued with the consideration of the bill.

Mr. KENNEDY. Mr. President, for the benefit of the Members, there is a final technical amendment which we expect will be cleared momentarily. We will then begin final statements on the legislation, for a period not to exceed 30 minutes, and then move to disposition of the legislation.

Mr. HATCH. Mr. President, I believe the minority leader——

Mr. DOLE. Mr. President, I would be happy to use 5 minutes of my leader time while we are waiting for clearance on that potential amendment.

The PRESIDING OFFICER. The Chair recognizes the Republican leader.

CIVIL RIGHTS COMPROMISE

Mr. DOLE. Mr. President, for nearly 2 years, President Bush has consistently expressed his willingness to accept a fair and responsible civil rights compromise.

Today, with this historic civil rights agreement, President Bush has delivered on his promise.

From day one, President Bush has been leading the charge for responsible civil rights legislation, not the grab-bag approach advocated by the beltway interest groups and the lawyers' lobby.

When the Patterson and Lorance cases were first decided in 1989, the President immediately proposed remedial legislation.

Last year the President took his civil rights commitment one step further by proposing legislation overturning four of the 1989 Supreme Court decisions and shifting the burden of proof to the employer in disparate impact cases.

This year, the President's efforts culminated with the introduction of the only pending civil rights bill that establishes a monetary remedy specifically for sexual harassment—up to $150,000.

By any standard, the President's civil rights initiative is fair, responsible, comprehensive.

It deserved to be passed last year, and it still deserves to be passed today.

THE COMPROMISE AGREEMENT

Now, there are some in the liberal media who are predictably claiming that the administration somehow gave up too much in the negotiations preceding the final compromise.

This claim is categorically false.

Throughout the negotiations, the administration had two main objectives: First, to ensure that the compromise was drafted in a way that would not force employers to resort to quotas; and second, to ensure that all damage remedies were reasonably capped.

On both counts, the administration has succeeded.

THE COMPROMISE—WARDS COVE

The compromise resolves all of the so-called Wards Cove issues, including the meaning of the term "business necessity."

For nearly 2 years, business necessity has been at the eye of the civil rights storm.

After endless hours of debate, we have finally come up with an acceptable business necessity definition.

Unlike H.R. 1 and the original version of S. 1745, the compromise does not change the "business necessity" standard as it has been defined by the Supreme Court in Griggs versus Duke Power and in subsequent Supreme Court cases.

This standard is intended to be broad and flexible enough to ensure that employers can adopt employment practices that serve a legitimate business goal.

If the business necessity standard is too tough to satisfy—like the standard in H.R. 1 and in the original version of S. 1745—rational employers would have been forced to adopt quotas in order to avoid time-consuming and expensive litigation and, I might add, endless litigation.

Fortunately, the compromise agreement defines the term "business necessity" in a way that reflects the flexible principle outlined by the Supreme Court in Griggs, in New York Transit Authority versus Beazer, and in other Supreme Court cases.

THE COMPROMISE—DAMAGES

The compromise also makes compensatory and punitive damages available for the first time in cases involving intentional discrimination, including sexual harassment.

These damages are capped, setting an important precedent for tort reform.

The caps range from a low-tier of $50,000 for businesses with 16 to 100 employees, to a high-tier of $300,000 for businesses with more than 500 employees.

Ninety-eight percent of all businesses fall within the low tier, which is much lower than the $150,000 cap contained in the President's bill.

With these caps, the incentive for frivolous lawsuits should be significantly reduced.

ONLY WAY OUT OF QUAGMIRE

Mr. President, this compromise is not perfect. It will not satisfy everyone.

But it is the best we can do under the circumstances.

The compromise may not be all things to all people, but it is the only way out of the civil rights quagmire—without producing quotas.

I want to thank my distinguished colleague from Utah, Senator HATCH, for his steadfast commitment—over the past 2 years—to fashioning a bill that will promote equal opportunity, not equal results.

I also want to congratulate my distinguished colleague from Missouri, Senator DANFORTH, who has worked tirelessly to get us where we are today.

Senator DANFORTH's leadership has been the engine driving the compromise effort.

Today, the engine has finally arrived in the station.

Mr. President, I ask unanimous consent that a section-by-section analysis representing the views of the administration, myself, and Senators BURNS, COCHRAN, GARN, GORTON, GRASSLEY, HATCH, MACK, MCCAIN, MCCONNELL, MURKOWSKI, SIMPSON, SEYMOUR, and THURMOND, be reprinted in the RECORD immediately after my remarks.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SECTION 1. SHORT TITLE

The legislation may be cited as the "Civil Rights Act of 1991."

SECTION 2. FINDINGS

The Congress finds that this legislation is necessary to provide additional protections and remedies against unlawful discrimination in the workplace. The Congress also finds that by placing the burden on plaintiffs to prove lack of business necessity for employment practices that have a disparate impact, rather than by placing the burden on defendants to prove the business necessity of such employment practices, the Supreme Court's decision in *Wards Cove Packing Co.* v. *Atonio*, 490 U.S. 642 (1989) has weakened the scope and effectiveness of Federal civil rights laws.

SECTION 3. PURPOSES

The purposes of this Act are to provide appropriate remedies for intentional discrimination and unlawful harassment in the workplace, to codify the concepts of "business necessity" and "job related" enunciated by the Supreme Court in *Griggs* v. *Duke Power Co.* and in the other Supreme Court decisions prior to *Wards Cove Packing Co.* v. *Atonio*, to confirm statutory authority and provide statutory guidelines for the adjudication of disparate impact suits under title VII of the Civil Rights Act of 1964, and to respond to recent decisions of the Supreme Court by expanding the scope of relevant civil rights statutes in order to provide adequate protection to victims of discrimination.

SECTION 4. PROHIBITION AGAINST RACIAL DISCRIMINATION IN THE MAKING AND PERFORMANCE OF CONTRACTS

Under 42 U.S.C. 1981, persons of all races have the same right "to make and enforce contracts." In *Patterson* v. *McLean Credit Union*, 109 S. Ct. 2363 (1989), the Supreme Court held: "The most obvious feature of the provision is the restriction of its scope to forbidding discrimination in the 'mak[ing] and enforce[ment]' of contracts alone. Where an alleged act of discrimination does not involve the impairment of one of these specific rights, [sec.] 1981 provides no relief."

As written, therefore, section 1981 provides insufficient protection against racial discrimination in the context of contracts. In particular, it provides no relief for discrimination in the performance of contracts (as contrasted with the making and enforcement of contracts). Section 1981, as amended by this Act, will provide a remedy for individuals who are subjected to discriminatory performance of their employment contracts (through racial harassment, for example) or are dismissed or denied promotions because of race. In addition, the discriminatory infringement of contractual rights that do not involve employment will be made actionable under section 1981. This will, for example, create a remedy for a black child who is admitted to a private school as required pursuant to section 1981, but is then subjected to discriminatory treatment in the performance of the contract once he or she is attending the school.

In addition to overruling the *Patterson* decision, this Section of the Act codifies the holding of *Runyon* v. *McCrary*, 427 U.S. 160 (1976), under which section 1981 prohibits private, as well as governmental, discrimination.

SECTION 5. DAMAGES IN CASES OF INTENTIONAL DISCRIMINATION

Section 5 makes available compensatory and punitive damages in cases involving intentional discrimination brought under Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act. It sets an important precedent in tort reform by setting caps on those damages, including pecuniary losses that have not yet occurred as of the time the charge is filed, as well as all emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, whenever they occur. Punitive damages are also capped, and are to be awarded only in extraordinarily egregious cases. The damages contemplated in this section are to be available in cases challenging unlawful affirmative action plans, quotas, and other preferences.

SECTION 6. ATTORNEY'S FEES

Section 6 amends 42 U.S.C. 1988 to authorize the award of attorney fees to prevailing parties in cases brought under the new statute (created by Section 5) authorizing damages awards.

SECTION 7. DEFINITIONS

Section 3 adds definitions as those already in Title VII.

SECTION 8. BURDEN OF PROOF IN DISPARATE IMPACT CASES

In *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971), the Supreme Court ruled that Title VII of the Civil Rights Act of 1964 prohibits hiring and promotion practices that unintentionally but disproportionately exclude persons of a particular race, color, religion, sex, or national origin unless these practices are justified by "business necessity." Law suits challenging such practices are called "disparate impact" cases, in contrast to "disparate treatment" cases brought to challenge intentional discrimination.

In a series of cases decided in subsequent years, the Supreme Court refined and clarified the doctrine of disparate impact. In 1988, the Court greatly expanded the scope of the doctrine's coverage by applying it to subjective hiring and promotion practices (the Court had previously applied it only in cases involving objective criteria such as diploma requirements and height-and-weight requirements). Justice O'Connor took this occasion to explain with great care both the reasons for the expansion and the need to be clear about the evidentiary standards that would operate to prevent the expansion of disparate impact doctrine from leading to quotas. In the course of her discussion, she pointed out:

"(T)he inevitable focus on statistics in disparate impact cases could put undue pressure on employers to adopt inappropriate prophylactic measures. . . . (E)xtending disparate impact analysis to subjective employment practices has the potential to create a Hobson's choice for employers and thus to lead in practice to perverse results. If quotas and preferential treatment become the only cost-effective means of avoiding expensive litigation and potentially catastrophic liability, such measures will be widely adopted. The prudent employer will be careful to ensure that its programs are discussed in euphemistic terms, but will be equally careful to ensure that the quotas are met." *Watson* v. *Fort Worth Bank & Trust Co.*, 108 S. Ct. 2777, 2787-2788 (1988) (plurality opinion).

The following year, in *Wards Cove Packing Co.* v. *Atonio*, 109 S. Ct. 2115, 2126 (1989), the Court considered whether the plaintiff or the defendant had the burden of proof on the issue of business necessity. This question had not been unambiguously resolved by the Supreme Court. The courts of appeals were divided on the issue. Compare, e.g., *Burwell* v. *Eastern Air Lines*, 633 F.2d 361, 369-372 (4th Cir.) (en banc), cert. denied, 450 U.S. 965 (1980), with *Coker* v. *Boeing Co.*, 662 F.2d 975, 991 (3d Cir. 1981) (en banc). Resolving an ambiguity in the prior law, the Court placed the burden on the plaintiff. See also *Board of Trustees* v. *Sweeney*, 439 U.S. 24 (1978) (per curiam) (resolving similar ambiguity in disparate treatment cases by placing the burden of proof on plaintiffs).

Under this Act, a complaining party makes out a prima facie case of disparate impact when he or she identifies a particular selection practice and demonstrates that the practice has caused a disparate impact on the basis of race, color, religion, sex, or national origin. The burden of proof then shifts to the respondent to demonstrate that the practice is justified by business necessity. It is then open to the complaining party to rebut that defense by demonstrating the availability of an alternative selection practice, comparable in cost and equally effective in measuring job performance or achieving the respondent's legitimate employment goals, that will reduce the disparate impact, and that the respondent refuses to adopt such alternative.

The burden-of-proof issue that *Wards Cove* resolved in favor of defendants is resolved by this Act in favor of plaintiffs. *Wards Cove* is thereby overruled. As the narrow title of the Section and its plain language show, however, on all other issues this Act leaves existing law undisturbed.

The requirement of particularity

The bill leaves unchanged the longstanding requirement that a plaintiff identify the particular practice which he or she is challenging in a disparate impact case.

The history of prior legislation introduced on this subject accords with this interpretation. This important issue, often referred to as the "cumulation" issue, has also been referred to be a number of other names: "group of practices"; multiple practices"; "particularity"; "aggregation"; and "causation."

Both S. 2104 and H.R. 4000 (from the 101st Congress), the original bills addressing this issue, would have permitted a plaintiff to sue simply by demonstrating that "a group of employment practices [defined in both bills as "a combination of employment practices that produce one or more employment decisions"] results in disparate impact." For good measure, these bills also specified that "if a complaining party demonstrates that a group of employment practices results in disparate impact, such party shall not be required to demonstrate which specific practice or practices within the group results in such disparate impact."

This language was modified in several subsequent versions to attempt to address the objection that it would permit suit on simple proof that an employer's bottom line numbers were wrong, and hence lead employers concerned about litigation to engage in quota hiring. In all subsequent versions that passed, however, three central features were retained.

First, all the bills that passed specifically allowed plaintiffs to bring disparate impact suits in some circumstances without isolating a simple employment practice that led to the disparate impact. See H.R. 4000, as passed by less than two-thirds of the House of Representatives in 1990, which permitted suit under some circumstances on the basis of a "group of practices"; S. 2014 as vetoed by President Bush in 1990 (same); H.R. 1 as passed by less than two-thirds of the House of Representatives (same).

Second, all these bills contained a provision generally requiring the plaintiff to identify which specific practice or practices resulted in the disparate impact, but with a gigantic exception relieving the plaintiff of that obligation if he or she could not meet it, after diligent effort, from records or other information of the respondent reasonably available through discovery or otherwise. See H.R. 4000, as passed by less than two-thirds of the House of Representatives in 1990 ("(i) except as provided in clause (iii), if a complaining party demonstrates that a group of employment practices results in a disparate impact, such party shall not be required to demonstrate which specific practice or practices within the group results in such disparate impact; . . . (iii) if the court finds that the complaining party can identify, from records or other information of the respondent reasonably available (through discovery or otherwise), which specific practice or practices contributed to the disparate impact—(I) the complaining party shall be required to demonstrate which specific practice or practices contributed to the disparate impact; and (II) the respondent shall be required to demonstrate business necessity only as to the specific practice or practices demonstrated by the complaining party to have contributed to the disparate impact;"); S. 2104 as vetoed by President Bush in 1990 ("(i) except as provided in clause (iii), if a complaining party demonstrates that a group of employment practices results in a disparate impact, such party shall not be required to demonstrate which specific practice or practices within the group results in such disparate impact; . . . (iii) the complaining party shall be required to demonstrate which specific practice or practices are responsible for the disparate impact in all cases unless the court finds after discovery (I) that the respondent has destroyed, concealed or refused to produce existing records that are necessary to make this showing, or (II) that the respondent failed to keep such records; and except where the court makes such a finding, the respondent shall be required to demonstrate business necessity only as to those specific practices demonstrated by the complaining party to have been responsible in whole or in significant part for the disparate impact;") H.R. 1 as passed by less than two-thirds of the House of Representatives ("(B) If a complaining party demonstrates that a disparate impact results from a group of employment practices, such party shall be required after discovery to demonstrate which specific practice or practices within the group results in disparate impact unless the court finds that the complaining party after diligent effort cannot identify, from records or other information of the respondent reasonably available (through discovery or otherwise), which specific practice or practices contributed to the disparate impact.").

Finally, all of these bills used some word other than "cause" in describing the relationship between the challenged practice(s) and the disparate impact. See H.R. 4000 as passed by less than two-thirds of the House of Representatives in 1990 (a complaining party may prevail by "demonstrat[ing] that a group of employment practices *results in* a disparate impact" although if he or she "can identify, from records or information reasonably available (through discovery or otherwise) which specific practice of practices *contributed* to the disparate impact" he or she must do so); S. 2104 as vetoed by President Bush in 1990 (a complaining party may prevail by "demonstrat[ing] that a group of employment practices *results in* a disparate impact", except that the complaining party "shall be required to demonstrate which specific practice or practices *are responsible* for the disparate impact" unless he or she cannot do so from the respondent's records); H.R. 1 as passed by less than two-thirds of the House in 1991 (same as H.R. 4000).

The Attorney General memorandum that accompanied President Bush's veto message of S. 2104 in 1990 specifically referenced these three features of the bill as the first argument in explaining why it had to be vetoed because it would lead to quotas. Nevertheless, the House of Representatives retained all three features in this year's H.R. 1, which contributed to continued stalemate as the Administration continued to threaten veto on the ground that the legislation would lead to quotas and the House was unable to muster a two-thirds majority in favor of the bill.

S. 1745 as introduced this year by Senator Danforth began to move away from this approach, although they were not addressed in a satisfactory manner in that bill. It required a complaining party to demonstrate that "a particular employment practice or particular employment practices (or decisionmaking process . . .) *cause[d]* a disparate impact." It also required a complaining party to demonstrate "that *each particular* employment practice causes, *in whole or in significant part*, the disparate impact" unless "the complaining party [could] demonstrate . . . that the elements of a respondent's decisionmaking process are not capable of separation for analysis" in which case "the decisionmaking process may be analyzed as one employment practice."

As finally agreed to, S. 1745 retains none of the three problematic features. It *always* requires the complaining party to demonstrate "that the respondent uses *a particular* employment practice that *causes* disparate impact." Language permitting challenge to multiple practices, or to a practice that only causes "a significant part" of the disparate impact has been eliminated. Likewise, there is no language exonerating the complaining party of the obligation to demonstrate that a particular employment practice caused the disparity if he or she cannot do so from records or other information reasonably available from the respondent.

This codification of the *Wards Cove* "particularity" requirement is consistent with every Supreme Court decision on disparate impact. In *no* Supreme Court disparate impact case has a plaintiff ever been permitted to go forward without identifying a particular practice that caused a disparate impact. All the Supreme Court cases focused on the impact of particular hiring practices, and plaintiffs have always targeted these specific practices. *See Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971) (high school diploma and written test); *Albemarle Paper Co.* v. *Moody*, 442 U.S. 405 (1975) (employment tests and seniority systems); *Dothard* v. *Rawlinson*, 433 U.S. 321 (1977) (height and weight requirements); *New York City Transit Authority* v. *Beazer*, 440 U.S. 568 (1979) (exclusion of methadone users); *Connecticut* v. *Teal*, 457 U.S. 440 (1982) (scored written test); *Watson* v. *Fort Worth Bank & Trust Co., 108 S. Ct. 2777 (1988) (subjective supervisory judgments).*

Justice O'Connor's plurality opinion in the *Watson* case, for example, is a full and accurate restatement of the law regarding particularity. Justice O'Connor stated (108 S. Ct. at 2788):

"The plaintiff must begin by identifying the specific employment practice that is challenged. Although this has been relatively easy to do in challenges to standardized tests, it may sometimes be more difficult when subjective selection criteria are at issue. Especially in cases where an employer combines subjective criteria with the use of more rigid standardized rules or tests, the plaintiff is in our view responsible for isolating and identifying the specific employment practices that are allegedly responsible for any observed statistical disparities."

Justice O'Connor then went on to explain that "[o]nce the employment practice at issue has been identified, causation must be proved; that is, the plaintiff must offer statistical evidence of a kind and degree sufficient to show that the practice in question has caused the exclusion of applicants for jobs or promotions because of their membership in a protected group." *Id.* at 2788–89.

Significantly, Justice Blackmun, who was joined by Justices Brennan and Marshall in a concurring opinion in Watson, did not dissent from Justice O'Connor's formulation of the particularity requirement. Although Justice O'Connor's opinion on the particularity issue was quite detailed and explicit, Justice Blackmun's opinion hardly addressed that issue at all. He merely noted in a footnote at the end of his opinion (108 S. Ct. at 2797, n. 10) that "the requirement that a plaintiff in a disparate-impact case specify the employment practice responsible for the statistical disparity" cannot "be turned around to shield from liability an employer whose selection process is so poorly defined that no specific criterion can be identified with any certainty, let alone be connected to the disparate effect." Thus, Justices Blackmun, Brennan and Marshall expressly recognized "the requirement that a plaintiff in a disparate-impact case specify the employment practice responsible for the statistical disparity." These Justices would only have dispensed with that requirement if the employer's selection process was "so poorly defined" that identification of a specific selection criterion with any certainty was impossible.

The particularity requirement is only fair. For a plaintiff to be allowed simply to point to a racial imbalance, and then require the employer to justify every element of his selection practice, would be grossly unfair, and would turn Title VII into a powerful engine for racial quotas.[1]

This particularity requirement is not unduly burdensome. Where a decisionmaking process includes particular, functionally-integrated elements which are components of the same test, those elements may be analyzed as one employment practice. For instance, a 100-question intelligence test may be challenged and defended as a whole; it is

[1]It should also be noted that in 1982 the Supreme Court held in Connecticut versus Teal that an employer cannot justify a particular practice that has a disparate impact simply by pointing to a racially balanced bottom line. So it would make no sense at all if a plaintiff could point to a racially unbalanced bottom line without identifying a particular practice.

not necessary for the plaintiff to show which particular questions have a disparate impact. This is the principle for which the Dothard case is cited in the agreed-upon legislative history. There, the combination of height and weight was used as a single test to measure strength.

Finally, the phrase "not capable of separation for analysis" means precisely that. It does not apply when the process of separation is merely difficult or may entail some expense—for example, where a multiple regression analysis might be necessary in order to separate the elements. It also does not apply in situations where records were not kept or have been destroyed. In such circumstances, the elements obviously are separable.

Senator Kennedy's *post hoc* suggestion at p. 15,233 of volume 137 of the October 25, 1991 daily edition of the Congressional Record that situations of this type are meant to be covered by this language is accordingly inconsistent with the language he purports to be construing. The example offered by Senator Kennedy also clearly is not included in the "exclusive legislative history" on the *Wards Cove* issues first incorporated into an interpretive memorandum agreed to that day by Senators Danforth, Kennedy and Dole before Senator Kennedy made his floor speech, and now made the exclusive legislative history by statutory provision. See sec. 8(b) of this bill.

In sum, the particularity provision of the compromise bill does exactly what the President has insisted all along that it do. It leaves the *Wards Cove* case law (which is the same as *Griggs* and all other Supreme Court cases) in place, and requires that plaintiffs identify the particular practice they are challenging.

The defendant's evidentiary standard: Job relatedness and business necessity

The bill embodies longstanding concepts of job-relatedness and business necessity and rejects proposed innovations. In short, it represents an affirmation of existing law, including *Wards Cove*.

For almost two years and through numerous legislative attempts and proposals, Congress sought to define business necessity; this bill rejects and displaces the following legislative proposals:

S. 2104 as introduced (Kennedy):

"(o) The term 'required by business necessity' means essential to effective job performance," Rejected.

S. 2104 as passed by the Senate on 7/18/90:

"(o)(1) The term 'required by business necessity' means—

"(A) in the case of employment practices involving selection (such as hiring, assignment, transfer, promotion, training, apprenticeship, referral, retention, or membership in a labor organization), the practice or group of practices must bear a significant relationship to successful performance of the job; or

"(B) in the case of employment practices that do not involve selection, the practice or group of practices must bear a significant relationship to a significant business objective of the employer.

"(2) In deciding whether the standards in paragraph (1) for business necessity have been met, unsubstantiated opinion and hearsay are not sufficient; demonstrable evidence is required. The defendant may offer as evidence statistical reports, validation studies, expert testimony, prior successful experience and other evidence as permitted by the Federal Rules of Evidence, and the court shall give such weight, if any, to such evidence as is appropriate.

"(3) This subsection is meant to codify the meaning of 'business necessity' as used in *Griggs* v. *Duke Power Co.* (401 U.S. 424 (1971)) and to overrule the treatment of business necessity as a defense in *Wards Cove Packing Co., Inc.* v. *Atonio* (109 S.Ct. 2115 (1989))." Rejected.

House Amendment to S. 2104 (passed by House 8/3/90):

"(o)(1) The term 'required by business necessity' means—

"(A) in the case of employment practices involving selection (such as hiring, assignment, transfer, promotion, training, apprenticeship, referral, retention, or membership in a labor organization), the practice or group of practices must bear a significant relationship to successful performance of the job; or

"(B) in the case of employment practices that do not involve selection, the practice or group of practices must bear a significant relationship to a significant business objective of the employer.

"(2) In deciding whether the standards in paragraph (1) for business necessity have been met, unsubstantiated opinion and hearsay are not sufficient; demonstrable evidence is required. The defendant may offer as evidence statistical reports, validation studies, expert testimony, prior successful experience and other evidence as permitted by the Federal Rules of Evidence, and the court shall give such weight, if any, to such evidence as is appropriate.

"(3) This subsection is meant to codify the meaning of 'business necessity' as used in *Griggs* v. *Duke Power Co.* (401 U.S. 424 (1971)) and to overrule the treatment of business necessity as a defense in *Wards Cove Packing Co., Inc.* v. *Atonio* (109 S.Ct. 2115(1989))." Rejected.

Conference Report on S. 2104 (vetoed by the President):

"(o)(1) The term 'required by business necessity' means—

"(A) in the case of employment practices involving selection such as tests, recruitment, evaluations, or requirements of education, experience, knowledge, skill, ability or physical characteristics, or practices primarily related to a measure of job performance, the practice or group of practices must bear a significant relationship to successful performance of the job; or

"(B) in the case of other employment decisions, not involving employment selection practices as covered by subparagraph (A) (such as, but not limited to, a plant closing or bankruptcy), or that involve rules relating to methadone, alcohol or tobacco use, the practice or group of practices must bear a significant relationship to a manifest business objective of the employer.

"(2) In deciding whether the standards described in paragraph (1) for business necessity have been met, unsubstantiated opinion and hearsay are not sufficient; demonstrable evidence is required. The court may receive such evidence as statistical reports, validation studies, expert testimony, performance evaluations, written records or notes related to the practice or decision, testimony of individuals with knowledge of the practice or decision involved, other evidence relevant to the employment decision, prior successful experience and other evidence as permitted by the Federal Rules of Evidence, and the court shall give such weight, if any, to such evidence as is appropriate.

"(3) This subsection is meant to codify the meaning of 'business necessity' as used in *Griggs* v. *Duke Power Co.* (401 U.S. 424 (1971)) and to overrule the treatment of business necessity as a defense in *Wards Cove Packing Co.* v. *Atonio* (109 S.Ct. 2115(1989))." Rejected.

H.R. 1 as introduced (Brooks):

"(o)(1) The term 'required by business necessity' means—

"(A) in the case of employment practices involving selection (such as hiring, assignment, transfer, promotion, training, apprenticeship, referral, retention, or membership in a labor organization), the practice or group of practices must bear a significant relationship to successful performance of the job; or

"(B) in the case of employment practices that do not involve selection, the practice or group of practices must bear a significant relationship to a significant business objective of the employer.

"(2) In deciding whether the standards in paragraph (1) for business necessity have been met, unsubstantiated opinion and hearsay are not sufficient; demonstrable evidence is required. The defendant may offer as evidence statistical reports, validation studies, expert testimony, prior successful experience and other evidence as permitted by the Federal Rules of Evidence, and the court shall give such weight, if any, to such evidence as is appropriate.

"(3) This subsection is meant to codify the meaning of 'business necessity' as used in *Griggs* v. *Duke Power Co.* (401 U.S. 424 (1971)) and to overrule the treatment of business necessity as a defense in *Wards Cove Packing Co., Inc.* v. *Atonio* (109 S.Ct. 2115(1989))." Rejected.

H.R. 1 as amended and passed by the House (Brooks-Fish):

"(o)(1) The term 'required by business necessity' means the practice or group of practices must bear a significant and manifest relationship to the requirements for effective job performance.

"(2) Paragraph (1) is meant to codify the meaning of, and the type and sufficiency of evidence required to prove, 'business necessity" as used in *Griggs* v. *Duke Power Co.* (401 U.S. 424 (1971)) and to overrule the treatment of business necessity as a defense in *Wards Cove Packing Co., Inc.* v. *Atonio* (490 U.S. 642 (1989))."

"(p) The term 'requirements for effective job performance' may include, in addition to effective performance of the actual work activities, factors which bear on such performance, such as attendance, punctuality, and not engaging in misconduct or insubordination." Rejected.

S. 1208 (Danforth):

"(o) The term 'required by business necessity' means—

"(1) in the case of employment practices involving selection, that the practice or group of practices bears a manifest relationship to requirements for effective job performance; and

"(2) in the case of other employment decisions not involving employment selection practices as described in paragraph (1), the practice or group of practices bears a manifest relationship to a legitimate business objective of the employer.

"(p) The term 'requirements for effective job performance' includes—

"(1) the ability to perform competently the actual work activities lawfully required by the employer for an employment position; and

"(2) any other lawful requirement that is important to the performance of the job, including factors such as punctuality, attendance, a willingness to avoid engaging in misconduct or insubordination, not having a work history demonstrating unreasonable

job turnover, and not engaging in conduct or activity that improperly interferes with the performance of work by others." Rejected.

S. 1408 (Danforth):

"(n) The term 'required by business necessity' means—

"(1) in the case of employment practices that are used as job qualifications or used to measure the ability to perform the job, the challenged practice must bear a manifest relationship to the employment in question.

"(2) in the case of employment practices not described in (1) above, the challenged practice must bear a manifest relationship to a legitimate business objective of the employer.

"(o) The term 'employment in question' means—

"(1) the performance of actual work activities required by the employer for a job or class of jobs; or

"(2) any requirement related to behavior that is important to the job, but may not comprise actual work activities." Rejected.

S. 1745 as introduced (Danforth):

"(n) The term 'the employment in question' means—

"(1) the performance of actual work activities required by the employer for a job or class of jobs; or

"(2) any behavior that is important to the job, but may not comprise actual work activities.

"(o) The term 'required by business necessity' means—

"(1) in the case of employment practices that are used as qualification standards, employment tests, or other selection criteria, the challenged practice must bear a manifest relationship to the employment in question; and

"(2) in the case of employment practices not described in paragraph (1), the challenged practice must bear a manifest relationship to a legitimate business objective of the employer." Rejected.

All of these prior versions were rejected.

In the place of these definitions of business necessity, the compromise bill says that the challenged practice must be *"job-related for the position in question and consistent with business necessity."* Since neither term is defined in the bill, the "Purposes" section is controlling.

In its original "Purposes" clause, S. 1745 said in pertinent part that the "purposes of this Act are . . . to overrule the proof burdens and meaning of business necessity in *Wards Cove Packing Co.* v. *Atonio* and to codify the proof burdens and the meaning of business necessity used in *Griggs* v. *Duke Power Co.* . . ." By contrast, the compromise bill's "Purposes" clause says that "[t]he purposes of this Act are—. . . to codify the concepts of 'business necessity' and 'job-related' enunciated by the Supreme Court in *Griggs* v. *Duke Power Co.*, and in the other Supreme Court decisions prior to *Wards Cove Packing Co.* v. *Atonio*." Thus, the bill is no longer designed to overrule the meaning of business necessity in *Wards Cove*. (Attorney General Thornburgh's October 22, 1990 Memorandum to the President had objected, at 5-6, to a provision of S. 1204 that would have overruled Wards Cove's "treatment of business necessity as a defense.") Instead, the bill seeks to codify the meaning of "business necessity" in *Griggs* and other pre-*Wards Cove* cases—a meaning which is fully consistent with the use of the concept in *Wards Cove*.

The relevant Supreme Court decisional law which is to be codified can be summarized as follows. *Griggs* said: ". . . any given requirement must have a manifest relationship to the employment in question." 401 U.S. at 432. There is no two-tier definition, no subdefinition of the term "employment in question." The Court also said in *Griggs*: "Congress has not commanded that the less qualified be preferred over the better qualified simply because of minority origins." *Id.* at 436.

As explained in the Attorney General's letter of June 21, 1991 to Senator Danforth, and again in the Attorney General's October 22, 1990 Memorandum to the President, this is the consistent standard applied by the Supreme Court. As the Attorney General stated to Senator Danforth, "an unbroken line of Supreme Court cases confirms" that the operative standard was " 'manifest relationship to the employment in question.' " The Court has used this phrase in *Albermarle Paper Co.* v. *Moody*, 422 U.S. at 425 (1975); *Dothard* v. *Rawlinson*, 433 U.S. at 329 (1977); *New York Transit Authority* v. *Beazer*, 440 U.S. at 587 n.31 (1979); *Connecticut* v. *Teal*, 457 U.S. at 446 (1982) (a Justice Brennan opinion); and *Watson* v. *Ft. Worth Bank and Trust*, 108 S.Ct. at 1790 (O'Connor plurality opinion for four Justices). Even Justice Stevens' dissent in *Wards Cove*, joined by Justices Brennan, Marshall, and Blackmun, cites the "manifest relationship" language at least three times as the applicable disparate impact standard. 109 S.Ct. at 2129, 2130 n.14.

Particularly significant among prior cases is the Supreme Court's 1979 decision in *New York City Transit Authority* v. *Breazer* 440 U.S. 568 (1979). This decision was well known to all sides in the negotiations and debates over the present bill. The *Beazer* case involved a challenge to the New York Transit Authority's blanket no-drug rule, as it applied to methadone users seeking non-safety sensitive jobs. A lower court had found a Title VII disparate impact violation. The Supreme Court, however, reversed: "At best, the [plaintiffs'] statistical showing is weak; even if it is capable of establishing a prima facie case of discrimination, it is assuredly rebutted by [the employer's] demonstration that its narcotics rule (and the rule's application to methadone users) is 'job related. . . .' " The Court noted that the parties agreed "that [the employer's] legitimate employment goals of safety and efficiency require the exclusion of all users of illegal narcotics. . . . Finally, the District court noted that those goals are significantly served by—even if they do not require—[the employer's] rule as it applies to all methadone users, including those who are seeking employment in on-safety-sensitive positions. The record thus demonstrates that [the employer's] rule bears a 'manifest relationship to the employment in question.' " *Griggs* v. *Duke Power Co.*, 401 U.S. 424, 432. *Id.* at 587, n. 31.

The Supreme Court's formulation in *Wards Cove* of the appropriate evidentiary standard defendants must meet is not only based upon that in *Beazer*, but is nearly identical with it. By removing the language in the purposes clause stating the bill overruled *Wards Cove* with respect "to the meaning of business necessity," by substituting the language in the compromise purposes section referring to Supreme Court decisions prior to *Wards Cove*, and by removing the definitions of business necessity or job-related and any definition of "employment in question," the present bill has codified the "business necessity" test employed in *Beazer* and reiterated in *Wards Cove*.

The language in the bill is thus plainly not intended to make that test more onerous for employers to satisfy than it had been under current law.

Furthermore, "job related for the position in question" is to be read broadly, to include any legitimate business purpose, even those that may not be strictly required for the actual day-to-day activities of an entry level job. Rather, this is a flexible concept that encompasses more than actual performance of actual work activities or behavior important to the job. See *Washington* v. *Davis*, 426 U.S. 229, 249-251 (1976). Thus, those purposes may include requirements for promotability to other jobs. There has never been any suggestion in the language or holdings of pre-Wards Cove cases that such purposes are not legitimately considered. Even Justice Stevens' *dissent* in *Wards Cove* stated the definition of business necessity quite broadly—it is required only that the challenged practice "serves a valid business purpose." 490 U.S. at 665.

Alternative practices with less adverse effect

The bill provides that a complaining party may establish that an employment practice has an unlawful disparate impact if he demonstrates the existence of an "alternative employment practice and the respondent refuses to adopt such alternative employment practice," where that demonstration is "in accordance with the law as it existed on June 4, 1989," i.e., the day before *Wards Cove* was decided.

The standards outlined in *Albemarle Paper Co.*, and *Watson* should apply.

The Supreme Court indicated in *Albemarle* that plaintiffs can prevail if they "persuade the factfinder that other tests or selection devices, without a similarly undesirable racial effect, would also serve the employer's legitimate [hiring] interest[s]; by so demonstrating, [plaintiffs] would prove the defendants were using their tests merely as a 'pretext' for discrimination." Any alternative practices which plaintiffs propose must be equally effective in achieving the employer's legitimate business goals. As was pointed out in *Watson:* "Factors such as the cost or other burdens of proposed alternative selection devices are relevant in determining whether they would be equally as effective as the challenged practice in serving the employer's legitimate goals." 108 S. Ct., at 2790. In making these judgments, the judiciary should bear carefully in mind the fact that "[c]ourts are generally less competent than employers to restructure business practices, and unless mandated to do so by Congress they should not attempt it." *Furnco Construction Corp.* v. *Waters*, 438 U.S. 567, 578 (1978).

Therefore, unless the proposed practice is comparable in cost and equally effective in measuring job performance or achieving the respondent's legitimate employment goals, the plaintiff should not prevail.

SECTION 9. DISCRIMINATORY USE OF TEST SCORES

Section 9 means exactly what it says: race-norming or any other discriminatory adjustment of scores or cutoff points of any employment related test is illegal. This means, for instance, that discriminatory use of the Generalized Aptitude Test Battery (GATB) by the Department of Labor's and state employment agencies' is illegal. It also means that race-norming may not be ordered by a court as part of the remedy in *any* case, nor may it be approved by a court as a part of a consent decree, when done because of the disparate impact of those test scores. Seen *Bridgeport Guardians, Inc.* v. *City of Bridgeport*, 933 F.2d 1140 (2d Cir. 1991).

It is important to note, too, that this section in no way be interpreted to discourage

employers from using tests. Frequently tests are good predictors and helpful tools for employers to use. Indeed, Title VII contains a provision specifically designed to protect the use of tests. See 42 U.S.C. 2000e–2(h). Rather, the section intends only to ban the discriminatory adjustment of test scores or cutoffs.

SECTION 10. CLARIFYING PROHIBITION AGAINST IMPERMISSIBLE CONSIDERATION OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN IN EMPLOYMENT PRACTICES

Section 10 of the bill addresses the holding in *Price Waterhouse* v. *Hopkins*, S. Ct. 1775 (1989), in which the Court ruled in favor of the woman who alleged that she had been denied partnership by her accounting firm on account of her sex. The Court there faced a case in which the plaintiff alleged that her gender had supplied part of the motivation of her rejection for partnership. The Court held that once she had established by direct evidence that sex played a substantial part in the decision, the employer could still defeat liability by showing that it would have reached the same decision had sex not been considered.

Section 10 allows the employer to be held liable if discrimination was a motivating factor in causing the harm suffered by the complainant. Thus, such discrimination need not have been the sole cause of the final decision.

The provision also makes clear that if an employer establishes that it would have taken the same employment action absent consideration of race, sex, color, religion, or national origin, the complainant is not entitled to reinstatement, backpay, or damages.

It should also be stressed that this provision is equally applicable to cases involving challenges to unlawful affirmative action plans, quotas, and other preferences.

SECTION 11. FACILITATING PROMPT AND ORDERLY RESOLUTION OF CHALLENGES TO EMPLOYMENT PRACTICES IMPLEMENTING LITIGATED OR CONSENT DECREE JUDGMENTS OR ORDERS.

In *Hansberry* v. *Lee*, 311 U.S. 32, 40–41 (1940) (citations omitted), the Supreme Court held:

"It is a principle of general application in Anglo-American jurisprudence that one is not bound by a judgment in personam in which he is not designated as a party or to which he has not been made a party by service of process. . . . A judgment rendered in such circumstances is not entitled to the full faith and credit which the Constitution and statutes of the United States . . . prescribe, . . . and judicial action enforcing it against the person or property of the absent party is not that due process which the Fifth and Fourteenth Amendments require."

In *Hansberry*, Carl Hansberry and his family, who were black, were seeking to challenge a racial covenant prohibiting the sale of land to blacks. One of the owners who wanted the covenant enforced argued that the Hansberrys could not litigate the validity of the convenant because that question has previously been adjudicated, and the convenant sustained, in an earlier lawsuit, although the Hansberrys were not parties in that lawsuit. The Illinois court had ruled that the Hansberrys' challenge was barred, but the Supreme court found that this ruling violated due process and allowed the challenge.

In *Martin* v. *Wilks*, 109 S. Ct. 2180 (1989), the Court confronted a similar argument. That case involved a claim by Robert Wilks and other white fire fighters that the City of Birmingham had discriminated against them by refusing to promote them because of their race. The City argued that their challenge was barred because the City's promotion process had been sanctioned in a consent decree entered in an earlier case between the City and a class of black plaintiffs, of which Wilks and the white fire fighters were aware, but in which they were not parties. The Court rejected this argument. Instead, it concluded that the Federal Rules of Civil Procedures required that persons seeking to bind outsiders to the results of litigation have a duty to join them as parties, see Fed. R. Civ. P. 19, unless the court certified a class of defendants adequately represented by a named defendant, see Fed. R. Civ. P. 23. The Court specifically rejected the defendants' argument that a different rule should obtain in civil rights litigation.

Under specified conditions, Section 11 of the bill would preclude certain challenges to employment practices specifically required by court orders or judgments entered in Title VII cases. This Section would bar such challenges by any person who was an employee, former employee, or applicant for employment during the notice period and who, prior to the entry of the judgment or order, received notice of the judgment in sufficient detail to apprise that person that the judgment or order would likely affect that person's interests and legal rights; of the relief in the proposed judgment; that a reasonable opportunity was available to that person to challenge the judgment or order by future date certain; and that the person would likely be barred from challenging the proposed judgment after that date. The intent of this section is to protect valid decrees from subsequent attack by individuals who were fully apprised of their interest in litigation and given an opportunity to participate, but who declined that opportunity.

In particular, the phrase "actual notice . . . appris[ing] such person that such judgment or order might adversely affect the interests and legal rights of such person," means of course that the notice itself must make clear that potential adverse effect. And this, in turn, means also that the discriminatory practice at issue must be clearly a part of the judgment or order. Otherwise, it cannot credibly be asserted that the potential plaintiff was given adequate notice. Thus, where it is only by later judicial gloss or by the earlier parties' implementation of the judgment or order that the allegedly discriminatory practice becomes clear, Section 11 would not bar a subsequent challenge. Moreover, the adverse effect on the person barred must be a likely or probable one, not a mere possibility. Otherwise, people would be encouraged to rush into court to defend against any remote risk to their rights, thus unnecessarily complicating litigation. Finally, the notice must include notice of the fact that the person must assert his or her rights or lose them. Otherwise, it will be insufficient to apprise the individual "that such judgment or order might adversely affect" his or her interests.

"Adequate representation" requires that the person enjoy a privity of interest with the later party. This is because in Section 11 both "(n)(1)(B)(i)" and "(n)(1)(B)(ii)" must be construed with "(n)(2)(D)" so that people's due process rights are not jeopardized. And the Supreme Court has stated clearly: "It is a violation of due process for a judgment to be binding on a litigant who was not a party or a privy and therefore never had an opportunity to be heard." *Parklane Hosiery Co.* v. *Shore*, 439 U.S. 322, 327 n.7 (1979).

SECTION 12. PROTECTION OF EXTRATERRITORIAL EMPLOYMENT

Section 12 extends the protections of Title VII and the ADA extraterritorially. It adopts the same language as the ADEA to achieve this end.

In addition, the section makes clear that employers are not required to take actions otherwise prohibited by law in a foreign place of business.

SECTION 13. EDUCATION AND OUTREACH

Section 13 provides for certain educational and outreach activities by the EEOC. These activities are to be carried out in a completely nonpreferential manner.

SECTION 14. EXPANSION OF RIGHT TO CHALLENGE DISCRIMINATORY SENIORITY SYSTEMS

Section 14 overrules the holding in *Lorance* v. *AT&T Technologies, Inc.*, 109 S. Ct. 2261 (1989), in which female employees challenged a seniority system pursuant to Title VII, claiming that it was adopted with an intent to discriminate against women. Although the system was facially nondiscriminatory and treated all similarly situated employees alike, it produced demotions for the plaintiffs, who claimed that the employer had adopted the seniority system with the intention of altering their contractual rights. The Supreme Court held that the claim was barred by Title VII's requirement that a charge must be filed within 180 days (or 300 days if the matter can be referred to a state agency) after the alleged discrimination occurred.

The Court held that the time for plaintiffs to file their complaint began to run when the employer adopted the allegedly discriminatory seniority system, since it was the adoption of the system with a discriminatory purpose that allegedly violated their rights. According to the Court, that was the point at which plaintiffs suffered the diminution in employment status about which they complained.

The rule adopted by the Court is contrary to the position that had been taken by the Department of Justice and the EEOC. It shields existing seniority systems from legitimate discrimination claims. The discriminatory reasons for adoption of a seniority system may become apparent only when the system is finally applied to affect the employment status of the employees that it covers. At that time, the controversy between an employer and an employee can be focused more sharply.

In addition, a rule that limits challenges to the period immediately following adoption of a seniority system will promote unnecessary, as well as unfocused, litigation. Employees will be forced either to challenge the system before they have suffered harm or to remain forever silent. Given such a choice, employees who are unlikely ever to suffer harm from the seniority system may nonetheless feel that they must file a charge as a precautionary measure—an especially difficult choice since they may be understandably reluctant to initiate a lawsuit against an employer if they do not have to.

Finally, the *Lorance* rule will prevent employees who are hired more than 180 (or 300) days after adoption of a seniority system from ever challenging the adverse consequences of that system, regardless of how severe they may be. Such a rule fails to protect sufficiently the important interest in eliminating employment discrimination that is embodied in Title VII.

Likewise, a rule that an employee may sue only within 180 (or 300) days after becoming subject to a seniority system would be unfair

to both employers and employees. The rule fails to protect seniority systems from delayed challenge, since so long as employees are being hired someone will be able to sue. And, while this rule would give every employee a theoretical opportunity to challenge a discriminatory seniority system, it would do so, in most instances, before the challenge was sufficiently focused and before it was clear that a challenge was necessary. Finally, most employees would be reluctant to begin their jobs by suing the employers.

Section 14 is not intended to disturb the settled law that disparate impact challenges may not be brought against seniority systems. See *TWA* v. *Hardison*, 432 U.S. 63, 82 (1977); *American Tobacco Co.* v. *Patterson*, 456 U.S. 63, 65, 69 (1982; *Pullman-Standard* v. *Swint*, 456 U.S. 273, 289 (1982).

SECTION 15. AUTHORIZING AWARD OF EXPERT FEES

Section 15 authorizes the recovery of a reasonable expert witness fee by prevailing parties. See *West Virginia University Hospitals, Inc.* v. *Casey*, No. 89-994 (U.S. Sup. Ct. Mar. 19, 1991); cf. *Crawford Fitting Co.* v. *J.T. Gibbons, Inc.* 482 U.S. 437 (1987). The provision is intended to allow recovery for work done in preparation of trial as well as after trial has begun.

In exercising its discretion, the court should ensure that fees are kept within reasonable bounds. Fees should never exceed the amount actually paid to the expert, or the going rate for such work, whichever is lower.

SECTION 16. PROVIDING FOR INTEREST AND EXTENDING THE STATUTE OF LIMITATIONS, IN ACTIONS AGAINST THE FEDERAL GOVERNMENT

Section 16 extends the period for filing a complaint against the Federal government pursuant to Title VII from 30 days to 90 days. It also authorizes the payment of interest to compensate for delay in the payment of a judgment according to the same rules that govern such payments in actions against private parties.

SECTION 17. NOTICE OF LIMITATIONS PERIOD UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967

This section generally conforms procedures for filing charges under the ADEA with those used for other portions of Title VII. In particular, it provides that the EEOC shall notify individuals who have filed charges of the dismissal or completion of the Commission's proceedings with respect to those charges, and allows those individuals to file suit from 60 days after filing the charge until the expiration of 90 days after completion of those proceedings. This avoids the problems created by current law, which imposes a statute of limitations on the filing of suit regardless of whether the EEOC has completed its action on an individual's charge.

SECTION 18. LAWFUL COURT-ORDERED REMEDIES, AFFIRMATIVE ACTION, AND CONCILIATION AGREEMENTS NOT AFFECTED

Section 18 specifies that nothing in the amendments made by this Act shall be construed to affect court-ordered remedies, affirmative action, or conciliation agreements, that are in accordance with the law. Thus, this legislation makes no change in this area to Title VII of the Civil Rights Act of 1964, which states:

"It shall be an unlawful employment practice for an employer

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. 2000e-2(a).

This legislation does not purport to resolve the question of the legality under Title VII of affirmative action programs that grant preferential treatment to some on the basis of race, color, religion, sex or national origin, and thus "tend to deprive" other "individual[s] of employment opportunities . . . on the basis of race, color, religion, sex, or national origin." In particular, this legislation should in no way be seen as expressing approval or disapproval of *United Steelworkers* v. *Weber*, 443 U.S. 193 (1979), or *Johnson* v. *Transportation Agency* 480 U.S. 616 (1987), or any other judicial decision affecting court-ordered remedies, affirmative action, or conciliation agreements.

SECTION 20. ALTERNATIVE MEANS OF DISPUTE RESOLUTION

This provision encourages the use of alternative means of dispute resolution, including binding arbitration, where the parties knowingly and voluntarily elect to use these methods.

In light of the litigation crisis facing this country and the increasing sophistication and reliability of alternatives to litigation, there is no reason to disfavor the use of such forums. See *Gilmer* v. *Interstate/Johnson Lane Corp.*, 111 S. Ct. 1647 (1991).

SECTION 21. SEVERABILITY

Section 21 states that if a provision of this Act is found invalid, that finding will not affect the remainder of the Act.

SECTION 22. EFFECTIVE DATE

Section 22 specifies that the Act and the amendments made by the Act take effect upon enactment. Accordingly, they will not apply to cases arising before the effective date of the Act. See *Bowen* v. *Georgetown University Hospital*, 488 U.S. 204 (1988); *cf. Kaiser Aluminum & Chemical Corp.* v. *Bonjorno*, 110 S. Ct. 1570 (1990) (declining to resolve conflict between *Georgetown University Hospital* and *Bradley* v. *Richmond School Board*, 416 U.S. 696 (1974)). At the request of the Senators from Alaska, section 22(b) specifically points out that nothing in the Act will apply retroactively to the Wards Cove Packing Company, an Alaska company that spent 24 years defending against a disparate impact challenge.

Mr. HATCH. Mr. President, I asked Senator GRASSLEY about this amendment, and he just wants to look at it. I think it will be in fine shape and it will be all right. So I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I have been tied up in other matters during the debate on this bill, but I want to express my support for the Civil Rights Act of 1991. I know it has been a difficult process to bring it to this point, and I congratulate all on both sides of the aisle who have worked hard and long to move the bill to this stage.

This bill, for the first time, makes it clear that victims, of intentional discrimination on the basis of sex, religion, or disability are entitled to compensatory and punitive damages, as are victims of intentional job discrimination on the basis of race, under current law.

I do, however, have serious constitutional reservations about one part of this bill—those provisions that extend coverage of certain antidiscrimination acts to employment by the Senate. While I believe it is important for victims of discrimination to have a procedure under which they may seek redress, I believe—as I indicated by voting for the Rudman amendment—that judicial appellate review as the final step of the process is not constitutional. I strongly believe in the doctrine of the separation of powers, and I believe that such judicial review is an unconstitutional intrusion into the internal affairs of the Senate. But if coverage of these antidiscrimination laws is to be extended to the Senate, I also believe it should be extended to the judicial branch.

They employ people. Why should it not be extended to the judicial branch? Is there anyone who believes that sexual harassment has never occurred, never occurs, or never will occur in the judicial branch?

I also wish to make clear that if a rollcall vote had been taken on the Grassley-Mitchell amendment, I would have voted in favor of the amendment.

I yield the floor, and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BUMPERS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BUMPERS. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. The Senate is considering S. 1745, and at this moment the Danforth amendment is pending.

Mr. BUMPERS. Mr. President, I want to make a few comments about this legislation, which has had such a tortuous beginning and ending, and to say that when I reflect on what has happened in civil rights in this country over the past 3 decades it has been just short of monumental.

We talk about all these bloodless revolutions that have taken place in Eastern Europe, and we are all immensely gratified by them. But I have a tendency to believe that the revolution that has occurred in this country

which was also bloodless, was even greater. But over the past 30 years it has lost some of its steam and its momentum, and while there has been no legal turning back of the clock, there has been a growing indifference in the area of civil rights.

There is an old expression that lovers can stand hatred and contempt better than they can stand indifference.

And so it is altogether proper that the Senate is considering this bill. I am very pleased that the President has agreed to it, and I am hopeful that the House will soon also sign off on it. It is a pretty dramatic and complex bill and is something of an experiment. This bill does indeed carry us further in the civil rights arena than most people would have dared believe we would go a year or two ago.

When the President continued to oppose this legislation, saying that it was a quota bill, I think he was referring to the provision in the bill that allows people to show that there is a disparate impact; in other words, that a business has a smaller proportion of minority employees than are represented in the applicant pool and that therefore businesses would hire by quotas so they could not be fairly charged with discrimination.

I prefer to believe that if there is anything about this bill that would make it lead to quotas, it is the fear, the inordinate fear of the business community in this country of the damage provisions, both compensatory and punitive which have been added to civil rights for the first time. It was often said during the rather acrimonious debate last year, and much less acrimonious debate this year, that this bill simply reversed five Supreme Court decisions. Mr. President, it does much more than that. It provides compensatory and punitive damages in cases of intentional discrimination under title VII of the Civil Rights Act. This is an immensely complex bill. Do not let anybody kid you. This is a complex bill.

Now, I am frank to tell you that last summer, when Senator DANFORTH and some people on this side of the aisle were negotiating, there were four Democrats appointed by the majority leader who played a role in these negotiations and I was one of them. But the role I played, mostly in negotiating what we hoped would be a compromise that President Bush would sign off on, was primarily in trying to negotiate damage provisions. As I said then and repeat now, the quota aspect of this bill, if there is one, is the inordinate fear of the business community of compensatory and punitive damages. I always believed that was the reason they might hire by quota, so that they could not ever be fairly accused of intentionally discriminating and face punitive damages.

It has been said to the press and perhaps on the floor that the Senator from Massachusetts and the majority leader, Senator MITCHELL, will introduce a bill to take all the caps or limits off the damage provisions once the President has signed this bill. It goes without saying that I think that is a mistake.

Now I know that there are perhaps a majority of people on this side of the aisle that will support unlimited damages. I want to point out that this bill is even more liberal with respect to damages than the one I negotiated back in July. We had agreed on $50,000 combined compensatory and punitive damages for employers with 100 employees or less, and $100,000 combined compensatory and punitive damages for employers with 100 to 500 employees, and $300,000 combined for every company that had more than 500 employees.

As you now know, we have a fourth category which adds $100,000 combined damages for employers with 100 to 200, $200,000 for those between 200 and 500, and $300,000 for all of those over 500 employees. It is also true that you have to allege and prove intentional, malicious, willful discrimination in order to receive those damages under this bill, and certainly that is as it should be. It is a heavy burden for plaintiffs.

Mr. President, the job of the U.S. Senate is to craft legislation on civil rights that is strong enough to dissuade people from discriminating against their employees on the basis of race, sex, disability, or religious belief but not so liberal that it literally promotes litigation. That is a very delicate, difficult balance to achieve.

But I want to say this, that one of the reasons I strongly support the caps on the damage provisions in this bill, and the reason I will resist the proposal of the Senator from Massachusetts to remove it, is because I have been both a country lawyer and a small businessman. And I confess that as a country lawyer, I filed lawsuits that did not have an awful lot of merit but that I knew had settlement value. Any honest trial lawyer worth his salt will tell you he has done that. Some might deny it, but I promise you they have all done it. And I can only tell you that as a small businessman—when I was a small hardware, furniture, appliance manufacturer, a lawsuit againsts me for $50,000 in punitive damages would have made me go ballistic because I did not have $50,000 nor any place to lay my hands on such a sum.

So, here is what I think we ought to do. We ought to allow this bill to go into effect and see what happens. Let us wait and see if it generates a spate of litigation. Let us see if we have case after case after case of small business people being sued for the maximum punitive and compensatory damages allowable under this bill for settlement purposes, and small business people saying to their lawyers, "See what's the least amount you can get me out of this for, no matter the merit or lack of merit."

Take the hypothetical case of John Jones who has worked all of his life to build a business. Let us assume, for easy figuring, that John is in a very competitive business and has 100 employees. His two sons have joined him in his business and John hopes that those two sons will be successful and carry on the business that he has so laboriously and tediously put together with determination and hard work.

Let us assume that John fires an employee—a woman, a member of a racial minority, a religious minority, or disabled person—and let us assume further, incidentally, that John Jones believes with all of his heart, with no malice, no vengeance, that that employee is being discharged because that employee is not carrying his or her weight.

So the first thing John knows he has been sued for reinstatement, backpay, and $50,000 in compensatory and punitive damages.

That is a lot of money because let's assume John has set aside $250,000 as a nestegg for retirement. I can tell you if things are like they used to be 20 years ago when I practiced law, John is going to tell his lawyers: See if you can settle this thing for $10,000. Or see if you can settle it for $20,000, or whatever. Because he knows if he has to go to the mat, he is going to be out $20,000 in attorney's fees. And even if he wins, he is out $20,000 in attorney's fees.

Second case, same situation but no caps on the damage provisions in the bill. Let us assume that January, February of next year the U.S. Congress elects to adopt the provision that the Senator from Massachusetts says he is going to offer. I have no doubt it will come out of his committee. Assume the same situation, only this time the fired employee sues for $5 million in compensatory and punitive damages because there are no limits on punitive damages.

So here is John Jones who has worked a lifetime to build a business, and I can tell you he can't stand the thought of being exposed to a runaway jury. Therein lies one of the real problems in this whole thing. Everybody worries about a runaway jury.

Recently, a woman sued Texaco and got $20 million, virtually all of it in punitive damages. So what do you think John Jones says to his lawyers this time when it is a $5 million allegation for compensatory and punitive damages? This time he says to his lawyer, see what is the least you can get me out of this for. And the plaintiff's attorney comes back and says they are dead serious. He says, "We think this was willful, malicious discrimination. We want the whole $5 million."

At that point John has to make a judgment. Make an offer of say $100,000. Or should he offer $200,000 which takes

his life savings but it might save the business for his sons. Or does he go to the mat and say I am going to fight this thing until the last dog dies?

Let us assume he takes the latter alternative and says, "I am going to fight it out with them. I am not guilty and I believe in our judicial system." So he says, "I am going to court," knowing he is probably going to be out $50,000 to $100,000 in attorney's fees. And then let us assume a judgment of $500,000 is rendered against him for punitive damages.

Now, John has some more choices. He can take bankruptcy and try to reorganize his business, or he can fold his tent. In this situation, the plaintiff probably will not be able to collect the judgment and in addition 99 other people are put out of work. Add to the scenarios that this is a little town of 2,000 people in Arkansas, which is the population of my hometown. We do not have anybody that employees 100 people, but if we did, we would revere that employer and cherish him and we would die 1,000 deaths if this happened to him and we lost 100 jobs in this little community.

Somebody might say, "Senator, do you realize that if you are female and black, or a racial minority, you can sue under the old section 1981 post-Civil War statute and you are not limited by any damage caps for punitive damages?"

Yes, I know that. You can sue under the old section 1981 or 1866, but bear in mind that that law covers only contractual relationships between plaintiff and the defendant. Section 1981 is not hiring and firing and job promotion as title VII of the Civil Rights Act is.

So my answer to that is this: Section 1981 is still the law and minority women and minority men can sue for unlimited damages where a contractural relationship has been breached for racial reasons. And now we have added very substantial compensatory and punitive damages for all women—black and white—all religious minorities, and all people with disabilities. That is a very substantial gain for the women of this Nation.

I will wrap these comments up, Mr. President, by saying that this has been a terrible day in the U.S. Senate; a terrible night last night, continued into today. A lot of mischievous things have happened here, a lot of things which the majority leader correctly called transparent efforts to maybe kill the bill.

Everybody has been going through a mea culpa, saying the U.S. Senate has a lot of work in front of it to reestablish its credibilty with the American people after the Clarence Thomas hearings, and I agree with that. Much was made during the hearings of the fact that the U.S. Senate and the U.S. House of Representatives impose these laws on other people but they do not impose them on themselves.

As I stated on the floor last evening, since I have been chairman of the Small Business Committee, I have held many hearings about the kinds of regulatory burdens we put on small business. Legislation like this, make no mistake about it, terrifies the small business community. The same is true of parental leave and all the others.

Mr. President, the amemdments we considered last night and today were as follows: First, is the Senate going to be covered by the civil rights bill? Yes. I voted for the Grassley amendment. Second, are Senators going to be subject to the same $50,000 in punitive damages? Yes. I voted yes. Third, is the Senator himself going to be required to pick up the tab rather than the taxpayers being required to pick up the tab if he intentionally discriminates? Yes. And I voted yes, though I'm not a wealthy man. As chairman of the Small Business Committee, I do not see that I could have voted differently, that is, to impose these burdens on others, and not ourselves.

Mr. President, I am not a constitutional scholar, but I revere that document. I probably have gotten into more political trouble back home by voting for things that were very popular at the moment but, in my opinion, unconstitutional. I have taken the oath we take when you put your left hand on the Bible and hold up your right hand and say "I will preserve, protect, and defend the Constitution of the United States," have always taken that oath very seriously. Today I was deeply troubled about the constitutionality of the Senate making itself subject to laws which are enforced by the judicial and executive branches of Government.

James Madison, in all of his wisdom, Ben Franklin and others, very carefully crafted that doctrine of the separation of powers in three branches of Government to make sure that there would be these checks and balances on each branch of Government, so one branch could not impose its will on another.

So if the Grassley amendment stands up, we could be in this very strange position of Members of the Senate having, for example, a lot of lawsuits filed against them in an election year by employees for embarrassment purposes, and I am not saying this is likely, but possible. Innocent as one might be that could be very embarrassing. Those suits may have no merit, and might be totally politically motivated. But it could happen.

Then you jump through all the hoops that the Grassley amendment requires to make sure you're complying with the law, but that wouldn't keep you from being sued.

Let us assume you lose at the first stage of a claim, and you appeal to the court of appeals where 80 percent of the judges may have been appointed by either George Bush or Ronald Reagan, and if you are a Democratic Senator, you are at the mercy of a Republican-appointed judge.

We heard the Senator from New Hampshire [Mr. RUDMAN] and the majority leader, Mr. MITCHELL, last night make these points much better than I have, discussing the constitutionality of this whole matter of the Senate being covered, and the separation of powers.

It was really troublesome for me to vote for some of those things because I do think they are constitutionally suspect. I don't feel absolutely certain that what we are doing here is unconstitutional and so I voted for the Senate being subjected to this law, and I am willing to let the Supreme Court test it, which it will certainly do very shortly.

In conclusion, Mr. President, I think Members of the U.S. Senate have a duty to stand up and say that they abhor discrimination against racial minorities, against women, the disabled, religious minorities, or anybody else. I am not at all sure that we have not let our guard down of late. And in times of economic distress, people tend to let racism rise. We can see what is happening in Louisiana. You do not have to be a rocket scientist to figure it out.

So with a twinge in my stomach, I intend to vote for this whole bill because I believe it is the right thing to do and I believe the Senators of this body should stand up and say: Businessmen, if this does not work out, if this turns out to be an abomination, we will come back and try our best to rectify it. It is not designed to punish you. It is designed to dissuade people from discriminating. It is not designed to encourage litigation. It is not designed to make people think they can get something for nothing. Hubert Humphrey used to say it is not ever going to be a good place for any of us to live until it is a good place for all of us to live. Here is a way we can remind ourselves where we have been coming from in the last 30 years and saying we are not going to turn back.

I yield the floor, Mr. President.

Mr. KASTEN. Mr. President, I rise today in strong support of the compromise civil rights legislation of 1991.

All Americans—blacks and whites, women and men, religious minorities, the disabled—deserve equal job opportunities. It pleases me a great deal that this body, the U.S. Senate, has chosen to lay aside partisan debate—and has chosen instead to reach a compromise that will help preserve equal rights for all.

Last year, we started out with a civil rights bill that was simply a grab-bag for the legal profession. This compromise legislation, unlike the bill passed on the House side, is a responsible measure which will combat discrimination effectively without entangling small businesses in endless litigation.

Mr. President, the compromise bill has many of the same components as the President's civil rights bill, S. 611, of which I am a cosponsor.

The bill addresses what has come to be known as the glass ceiling issue. It seeks to eliminate the artificial barriers which have served to block the advancement of qualified women and minorities in the workplace. The bill will establish a Glass Ceiling Commission, which is to be provided with the resources and powers to examine those practices and policies in corporate America which impede the advancement of women and minorities. The Commission will prepare a report for the President and Congress—due 15 months after enactment—examining the reasons for the existence of the glass ceiling and making recommendations with respect to policies which would eliminate it.

Another component of this compromise legislation is that it extends the coverage of civil rights legislation to Congress itself. Last year I, and 25 other Senators, voted in favor of Senator GRASSLEY'S amendment, which would have provided congressional coverage at that time. Unfortunately, that amendment failed. The legislation makes sure that Congress does not exempt itself from civil rights protections which the rest of the country is expected to comply with.

This bill will go a long way in helping to ensure equal opportunity for women, minorities, and all Americans. I applaud the untiring efforts by the President, Senator DANFORTH and Senator DOLE and others in reaching this compromise.

I think it is also important to point out that the only way Americans can truly enjoy equality and empowerment is through fair and equal job opportunities. That is why we have to complete our civil rights agenda for this year by enacting a strong progrowth economic package.

Today, we pass a valuable civil rights bill. The next step is to create a thriving, job-creating economy, so that all Americans will have a prosperity in which to share. I hope that my colleagues will put aside their partisan differences—just as they have on the civil rights bill—as we confront this essential economic task.

Mr. HATFIELD. Mr. President, once again, the Senate has squarely before it the enormously complex and emotional issue of civil rights. Unlike previous occasions, we meet today on the basis of a bipartisan agreement. Let me start by commending my colleague from Missouri, Senator DANFORTH, for his exceptional commitment to this issue.

This body has spent the better part of the last 2 years closely scrutinizing and at times intensely debating the issue of civil rights. We now come together in a spirit of bipartisan achievement. As one of the original seven cosponsors of this legislation, I have had the privilege of working with Senator DANFORTH and can therefore say with authority that, were it not for his expertise and undying patience, this important victory might well have eluded us once again.

As a Republican, I am especially proud to have played a part in this effort, an effort that is certainly in the best tradition of the party of Lincoln. One year ago, I supported the Civil Rights Act of 1990, a bill similar in many ways to the bill before the Senate today. My colleagues will recall the intense 11th hour negotiations championed by Senator DANFORTH that came so near to an agreement. Unfortunately, this legislation was prevented from becoming the law of the land by a single dissenting vote in this body.

In the aftermath of that vote, I was pleased to join with a number of Republican Senators, led by Senator DANFORTH, to fashion a civil rights bill that could become law. In this effort, we started from and built upon the unsuccessful legislation from a year ago. After a great many meetings, phone conferences—after a great number of letters and memos—after a seemingly infinite number of drafts of bill language—and after introducing on this floor seven separate bills and one significant substitute amendment, here we are at the home stretch. After intense last-minute negotiations, both the administration and a solid coalition of bipartisan Senators now support the compromise.

There is much to be encouraged about. First, we have a President who has demonstrated a strong commitment to civil rights. He has repeatedly expressed his desire to sign a civil rights bill, and has even submitted his own proposal for that purpose. He has announced his enthusiastic support for the compromise now before the Senate. Second, the House of Representatives is a body no less committed to the cause of civil rights. Earlier this year, that body passed its own rather progressive civil rights bill.

The time has come at last for the Senate to act. Being what could be called moderate Republicans, we have attempted to initiate this action by proposing what we regard as a balanced and fair civil rights bill. It continues to be our view that it is in the best interests of the Nation will be best served if we resolve the complex and sensitive issues here in the Senate, rather than allowing them to be used as mud in 1992 elections.

The purpose of this legislation is quite narrow. We are here to restore the proper application of the Federal civil rights law to a number of specific areas. Over the past several years, the Supreme Court has misinterpreted congressional intent in a number of areas of civil rights law. This legislation corrects these misinterpretations by fine tuning the Civil Rights Act of 1964. We must not allow the important purpose of this legislation to be obscured or diluted by other issues, no matter how compelling these other issues might be. Too much has been invested in this legislation to allow it to torn asunder by special interests more interested in fracturing debate than passing meaningful legislation.

Each year, more women and minorities seek to enter and continue successfully in the competitive American work force. It is our responsibility to see that they can do so on an equal basis with all others, as free of the ugly obstacles of discrimination as it is in our power to legislate.

Although many would argue otherwise, discrimination still exists in America. In my own State of Oregon, a disturbing level of discrimination and racial hatred is daily bubbling to the surface. In fact, Oregon streets saw 323 such racial incidents in 1989.

Acts of discrimination are unacceptable in our society, especially in the workplace. Yet discrimination lives on, most often in subtle form. Last week, my colleague from Maine, Senator COHEN, referred to a recent study conducted by the Urban Institute. That study concluded that significant number of black job applicants did not get as far in the job application process as their equally qualified white counterpart. This study does not necessarily indicate intentional discrimination. It does, however, indicate a lack of fairness for minorities who seek employment. This unfairness, whether intentional or not, must be rooted out of our system.

Other statistics are equally disturbing: While black men represent only 3.5 percent of college students, they make up 46 percent of the prison population. It is not surprising that black males stand a 1-in-23 chance of being murdered by age 25. Blacks are three times as likely to be poor and twice as likely to be unemployed. Some have even predicted that black will not catch up with whites in economic terms until sometime in the 22d century.

Mr. President, civil rights legislation is one of the most difficult issues to come before the Senate. The ultratechnical legalisms often confuse lawyer and nonlawyer alike. It is also difficult because the goal is really outside the reach of any legislative body. Our true goal is to end discrimination. Unfortunately, discrimination is most often hidden away, deep in the back of the mind, a place quite correctly beyond the grasp of this or any other legislative body.

But in the face of this discouraging act, we must not give up. While it is beyond our power to end discrimination in this country, it is no less incumbent upon us to ensure that the laws of the United States offer no com-

fort to those who engage in discriminatory practices. We must remember that we are always in the right when we seek to ensure fundamental principles of fairness for all citizens. Let us recommit ourselves to these fundamentals that are the right of all citizens, but sadly are not yet enjoyed by all.

In my 24 years in the Senate, I have played an active role in the passage of hundreds—and possibly thousands—of pieces of legislation. These have ranged from little known initiatives to those of great value; from the most obscure resolutions to the most hard fought and socially significant acts of Congress.

I count this act, the Civil Rights Act of 1991, among the most important, not because it will send a tidal wave of social change rolling across this country, it will not. This legislation is significant because it reaffirms and builds upon the commitment of this Government to enact laws that promote the principles of fairness and morality.

As citizens of the United States, we are blessed by many things. The birth of this Nation resembles a gift from our Creator. We are blessed with vast lands rich in natural resources. From the beginning, we have benefited from a population of abundant talent, diversity, and interest. We were also blessed in the timing of our creation: Those who established this Nation benefited equally from the vivid lessons of history and from the examples of their contemporaries. In the New World, they sought to create a nation founded on the highest principles of the human race and springing from the will of the people. We are daily benefactors of this worthy creation whose value is far beyond our comprehension.

As Senators, we are elected to carry on this tradition. Thus, we operate at our highest calling when we seek to further the causes of fairness and morality. In reaching a compromise on the Civil Rights Act of 1991, we reaffirm these grand objectives that were the cornerstones of the Emancipation Proclamation, the post-Civil War Reconstruction amendments, and the Civil Rights Act of 1964. Just as nature abhors a vacuum, so too does democracy abhor injustices, injustices such as racial discrimination.

It is time for this body to act to stop discrimination where it can be detected. All Americans deserve a fair chance at employment. In every instance, the most qualified applicant should be hired.

Observers should note what we say here today: Merit should be the measurement, not considerations that are irrelevant to getting the job done. Such a policy makes good business sense and is fair. And this is just what our legislation establishes.

I ask unanimous consent that an article from the Wall Street Journal of May 15, 1991, be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, May 15, 1991]

RACIAL BIAS AGAINST BLACK JOB SEEKERS REMAINS PERVASIVE, BROAD STUDY FINDS

(By David Wessel)

WASHINGTON.—After sending carefully selected pairs of young black and white men to apply for 476 entry-level jobs, researchers at the Urban Institute found that the blacks were three times as likely as whites to face discrimination.

The findings, released yesterday by the Washington think tank, demonstrate that racial discrimination in employment is still widespread in the U.S. 27 years after it was outlawed. One of the researchers, economist Raymond Struyk, called the study "the strongest evidence ever developed on the extent of racial discrimination in hiring." It comes amid a heated debate between Congress and the White House over revamping civil rights laws.

In about three-quarters of the job openings, the researchers found no discrimination, but they took little comfort from that. In one of every five cases, the black man didn't get as far as his equally qualified white counterpart. The black didn't get an application form when the white did, or he didn't get an interview or job offer.

EXTRA OBSTACLES

"We think 20% is a substantial rate of discrimination," Mr. Struyk said. "If you think of a young man going from firm to firm looking for work, that's a one-in-five chance. You add these things up, and they can get pretty discouraging."

In only 7% of the cases, the black men advanced further than their white counterparts, a finding that led the researchers to conclude that so-called reverse discrimination isn't as widespread as some critics of civil rights law and affirmative action programs suggest.

Overall, 15% of the white applicants were offered a job when their black counterpart wasn't, and only 5% of the blacks were offered a job when their white counterpart wasn't. In an additional 13% of the cases, both men were offered the job.

The research borrows a technique long used to investigate discrimination in housing, but only lately used in employment. The Lawyers Committee for Civil Rights Under Law, based here, recently used two pairs of testers to support allegations that a local employment agency discriminates against blacks.

The new Urban Institute study, however, was far broader. Ten pairs of men between 19 and 24 years old were dispatched to respond to randomly chosen help-wanted ads published last summer in the Washington Post and Chicago Tribune. The men were paired to be similar in appearance and manner. One team, for instance, consisted of a 6-foot-4-inch bearded white and a 6-foot-2-inch bearded black. Each team memorized similar biographies and practiced interviews to minimize differences. Nearly all the help-wanted ads were for retail, hotel, restaurant or other service jobs.

WORSE IN WASHINGTON

Blacks fared worse than whites far more often in Washington than in Chicago, surprising the researchers. Whites were offered jobs when their black counterparts weren't in 19% of the cases in Washington, but in only 10% of the Chicago cases. "It's really a puzzle," said Margery Turner, another of the researchers.

The differences between the cities were particularly acute in comparing face-to-face interview experiences. The researchers found that in Washington far more blacks than whites—60% vs. 16%—were somehow treated less favorably in interviews than counterparts. They had to wait longer, had a shorter interview or reported discouraging comments from interviewers, the majority of whom were white. But in Chicago, roughly the same proportion—42% of whites and 37% of blacks—were treated unfavorably.

Blacks were more likely to encounter discrimination in white-collar jobs and sales jobs. The researchers found no difference between suburban and urban employers or between employers in predominantly white and predominantly black neighborhoods.

Mr. GORE. Mr. President, I rise today in support of the civil rights bill now before the Senate. And, I welcome the President's support of this legislation. It is my hope that what we are seeing now is an end to the divisive politics of race and that we have heard the word "quota" for the last time from the White House.

This bill represents the tireless effort to protect the civil rights of all Americans. These are issues I care about deeply, and I am pleased negotiations have produced a bill which will pass the Senate, which the President will sign, and which, as law, will make a critical difference in the lives of millions of Americans.

President Bush has taken too long to relinquish this issue as a political weapon, and though it may be now that it is only for political reasons that he's agreed to this bill—preparing in fact to claim this Democratic victory as his own—the fact is, whether you think President Bush caved in or led forward, there is a bipartisan consensus on this civil rights bill and, for the American people that's what's important.

For too long, the politics of division have poisoned our national debate. For too long, every effort at progress, every attempt to move forward was blocked by this White House. They told the business roundtable to fold up their negotiations and go home. They told this Senate to forget about a bill. They told one of our colleagues, a Republican who has struggled hard to find agreement, that they would not agree.

Let us all hope that those days are behind us now. Let us all hope that President Bush has decided it's more important to make progress than to play politics; more important to move forward than slip back.

Mr. President, I come from the South. We've seen this politics of division for generations. Whenever economic hard times threaten middle-income families or working families, those who don't want to find the economic answers, those who don't want to do the hard work to change the situation, just start yelling race. It's dangerous political game that threatens to rip apart the very fabric of our Nation.

So today, I stand here optimistic but—based on the track record of this

administration—not convinced that we've seen the last of this brand of politics. Certainly, the need for us to move forward to confront the economic pressures facing middle-income and working families is clear. And as compelling is the need for us to move forward together, as one Nation.

Mr. President, this legislation addresses critical issues.

During the 1988–89 term, the U.S. Supreme Court handed down decisions in a series of cases which severely curtailed the rights of minorities and women in the workplace and made it harder for them to fight discrimination. This bill recognizes that those decisions were flawed, that we shouldn't be weakening Americans as they fight discrimination, and it provides additional Federal remedies to address sexual harassment in the workplace.

This bill restores protections against racial and ethnic discrimination which were struck down by these rulings. For example, the Court ruled that the statute which gives each of us the right to "make and enforce contracts" does not apply to workers after they are hired. In other words, if you're a woman or a minority, you're protected from discrimination during the hiring process but you're not protected—from discrimination or harassment—once you're on the job. This bill makes it clear that employees are entitled to a work environment that is free from harassment and discrimination.

In another case, the Court said a business did not have to prove that job requirements were in fact connected to the job to be done. They placed that burden on the employee—leaving with the worker the virtually impossible task of proving that a prospective employer was making an unreasonable requirement and, in the process, discriminating against someone seeking employment. This bill restores this burden of proof to the employer, so that the employer will be required to show that a practice is necessary to business.

Across this Nation, as a result of the Court's rulings, Americans are no longer able to seek redress when they experience legitimate instances of job discrimination. This bill restores protections against some of the most offensive instances of discrimination based on race and sex.

I would have preferred if this bill did not include caps on damages for sexual harassment, and I understand we will address this issue with separate legislation very soon. No one could witness the vast outpouring from women around this country during Prof. Anita Hill's testimony and not be moved by the evidence that sexual harassment is all too common, all too real, for far too many women. By the thousands, women were calling their representatives—in some cases, sharing stories that had never been told—to send a clear, strong message: Sexual harassment is real, it occurs far too often and women are entitled to protection and redress when they are its victims. We cannot shut out or shortchange their voices.

But Mr. President, make no mistake about it, this is a good bill, a much-needed bill. And it is not and never was a quota bill—it is a civil rights bill. At long last we have finally been able to return to standards that have been in practice for almost two decades until a supposedly nonactivist Supreme Court dismantled them.

We have the chance here to open a new era of unity and cooperation; to renew our commitment to opportunity and progress or to turn back, to turn to the politics of desperation and division in a cynical exercise to win votes that will mean we'll lose our way. Unfortunately, as a nation we're not free from racism and bigotry. We have made progress, and throughout our history, we have demonstrated that when people of good will join together we can defeat ignorance and hate and fear. There is still much work to be done and much is at stake.

As we grapple with our economic problems, the deficit, healing the environment, educating our children, and providing jobs and health care for Americans, we must not be misled by a mean-spirited cynicism that will distract and divide us. Instead, we must work together and move forward together to realize our dreams.

Mr. SIMPSON. Mr. President, I am pleased to speak in support of the Civil Rights Act of 1991, as amended by the Danforth compromise amendment.

This compromise legislation will improve the ability of civil rights plaintiffs to make their cases in disparate impact suits, because it will reverse the Supreme Court's ruling in Wards Cove versus Atonio on the matter of burdens of proof. However, the compromise bill wisely avoids the pitfalls of earlier versions of the bill, which made unwise and unnecessary changes to other aspects of disparate impact law. This is a sensible resolution of the disparate impact issue, because it preserves the right of plaintiffs to make their case without creating adverse side effects in the workplace—such as quota based hiring.

This bill will also overturn two Supreme Court decisions which almost everyone agrees needed revision: First, the Lorance case, regarding discriminatory seniority systems; and second, the Patterson case, which limited the right of plaintiffs to sue to remedy racial discrimination under 42 U.S.C. 1981. This is another beneficial expansion of our civil rights laws for plaintiffs.

Finally, this compromise bill creates a new monetary remedy for the victims of sexual harassment and other forms of intentional discrimination. Such a remedy does not exist in current law. Let there be no mistake about how broad, sweeping, and generous this portion of the bill is. I strongly endorse the concept of monetary relief for intentional discrimination. I cautiously endorse this specific remedy, because it opens the door to jury trials and compensatory and punitive damages, instead of the traditional labor-law remedy: Back pay, or double back pay. However, in the spirit of compromise, I find this provision acceptable.

However, I will be watching this section closely as lawsuits are filed to exercise this new legal right. I am hopeful that we will achieve an appropriate balance here: Victims of sexual harassment and of other forms of intentional discrimination should have meaningful remedies; however, trial lawyers should not benefit inordinately from this section by charging large contingency fees and needlessly prolonging litigation. If I find that the victims of mistreatment in the workplace are benefiting much less than the lawyers who are bringing their cases, then I will be back to reexamine the damages section.

Finally, Mr. President, let me pay tribute to the three parties who made this legislation a reality: Senator JACK DANFORTH, my lovely friend, for his tireless efforts to reach a bipartisan compromise; President Bush, John Sununu, and Boyden Gray, for their steady courage to criticize poor proposals and to endorse appropriate proposals; and my friend, Senator KENNEDY, for his pragmatic approach to meaningful reform of our civil rights law.

The good-faith efforts of these three parties have produced for us all a bipartisan civil rights law. Civil rights laws have some of the most dramatic effects on our society as any that Congress passes, and I believe such laws should always be bipartisan. I am pleased that one party is no longer trying to jam a civil rights law down another party's throat, and that this civil rights law will continue in the fine American tradition of bipartisan consensus.

Mr. President, I urge the adoption of the legislation.

INTERPRETATIVE MEMORANDUM

Mr. DANFORTH. Mr. President, I am pleased that Senator KENNEDY has agreed with almost all of the original cosponsors, interpretative memorandum. I understand that he questions only the discussion in our memorandum that the original cosponsors, who are the authors of the effective date provision, do not intend for the bill to have any retroactive effect or application.

My review of Supreme Court case law supports my reading that in the absence of an explicit provision to the contrary, no new legislation is applied retroactively. Rather, new statutes are to be given prospective application only, unless Congress explicitly directs

otherwise, which we have not done in this instance. Support for this proposition is derived from Justice Scalia's concurring opinion in *Kaiser Aluminum & Chemical Corp.* v. *Bonjorno*, 110 S.Ct 1570, 1579 (1990), and the unanimous opinion of the Supreme Court in *Bowen* v. *Georgetown University Hospital*, 488 U.S. 204, 208 (1988), and the numerous cases cited by Justice Kennedy in Bowen.

I acknowledge that there appear to be two cases that do not adhere to this principle but instead support retroactive application of new statutes in the absence of "manifest injustice." *Bradley* v. *Richmond School Board*, 416 U.S. 696 (1974); *Thorpe* v. *Housing Authority of Durham*, 393 U.S. 268 (1969). The sponsors disapprove of these cases.

Our intention in drafting the effective date provision was to adhere to the principle followed by the vast majority of Supreme Court cases and exemplified by Bowen and Justice Scalia's concurrence in Bonjorno.

Subsection 22(b), regarding certain disparate impact cases, is intended only to provide additional assurance that the provisions of the bill will not be applied to certain cases that fit the provisions of that subsection. It should not be read in derogation of the sponsors' intention not to provide for retroactive effect or application as expressed in subsection 22(a) of the bill.

There being no objection, the memorandum was ordered to be printed in the RECORD as follows:

SPONSORS' INTERPRETATIVE MEMORANDUM ON ISSUES OTHER THAN WARDS COVE—BUSINESS NECESSITY/CUMULATION/ALTERNATIVE BUSINESS PRACTICE

This Interpretive Memorandum is intended to reflect the intent of all of the original cosponsors to S. 1745 with respect to those issues not addressed by the Interpretive Memorandum introduced into the record at S 15276 on October 25, 1991.

SECTION 1: SHORT TITLE

This legislation may be referred to as the "Civil Rights Act of 1991."

SECTION 4: PROHIBITION AGAINST ALL RACIAL DISCRIMINATION IN THE MAKING AND ENFORCEMENT OF CONTRACTS

Section 4 fills the gap in the broad statutory protection against intentional racial and ethnic discrimination covered by section 1981, 42 U.S.C. 1981 (Section 1977 of the Revised Statutes) that was created by the Supreme Court decision in *Patterson* v. *McLean Credit Union*, 491 U.S. 164 (1989). Section 4 reinstates the prohibition of discrimination during the performance of the contract and restores protection from racial and ethnic discrimination to the millions of individuals employed by firms with fewer than 15 employees. The list set forth in subsection (b) is illustrative only, and should be given broad construction to allow a remedy for any act of intentional discrimination committed in the making or the performance of a contract. Section 4 also overturns *Patterson* in contractual relationships other than employment, and nothing in the amended language should be construed to limit it to the employment context.

Section 4 also codifies the holding of *Runyon* v. *McCrary*, 427 U.S. 160 (1976), reaffirmed in *Patterson*, that section 1981 prohibits private, as well as governmental, discrimination.

SECTION 5: DAMAGES IN CASES OF INTENTIONAL DISCRIMINATION

1. The Need for Damages

Current civil rights laws permit the recovery of unlimited compensatory and punitive damages in cases of intentional race and ethnic discrimination. [See notes regarding Sec. 4 overturning *Patterson* v. *McLean Credit Union* with regard to restoring the prohibition against all racial and ethnic discrimination in the making and enforcement of contracts.] No similar remedy exists in cases of intentional gender, religion, or disability discrimination.

Under 42 U.S.C. 1981, victims of intentional racial and ethnic discrimination are entitled not only to equitable relief, but also to compensatory damages. Further, in egregious cases, punitive damages may also be awarded. *Johnson* v. *Railway Express Agency, Inc.*, 421 U.S. 454, 460 (1975); *see also Patterson* v. *McLean Credit Union*, 491 U.S. , 109 S.Ct. 2375 n.4. By contrast, under Title VII and the Americans with Disabilities Act (ADA) victims of intentional gender, religious or disability discrimination may receive only injunctive relief, reinstatement or hiring, and up to two years backpay. Neither Title VII nor the ADA permit awards of compensatory or punitive damages no matter how egregious the discrimination is in a particular case. (See section 706(g), 42 U.S.C. sec. 2000e–5(g)).

S. 1745 creates a new provision, to be codified in section 1981A in Title 42 of the U.S. Code. Section 1981A authorizes the award of compensatory and punitive damages in cases of intentional employment discrimination against persons within the protected categories of Title VII and the Americans with Disabilities Act.

In order to assure that a complaining party does not obtain duplicative damage awards against a single respondent under both section 1981 and section 1981A, the provision limits section 1981A damage awards to a complaining party who "cannot recover under section 1977 of the Revised Statutes (42 U.S.C. 1981)." The complaining party need not prove that he or she does not have a cause of action under section 1981 in order to recover damages in the section 1981A action.

Moreover, this provision does not prevent a person from challenging discrimination which causes demonstrably different harms under each of the statutes. For example, a woman who suffers both race and sex harassment, and is injured in different ways by each, may challenge the race discrimination under section 1981 and the sex discrimination under section 1981A, and if proven, may recover under both. The court should, of course, ensure that she does not receive duplicate awards for the same harm.

Section 1977A(b)(4) (42 U.S.C. section 1981A(b)(4)) makes clear that nothing in section 1977A should be construed to limit the scope of, or the relief available under, section 1977 of the Revised Statutes, 42 U.S.C. 1981. The new damages provision thus does not limit either the amount of damages available in section 1981 actions, or the circumstances under which a person may bring suit under this section. For example, the bill does not affect the holding of the Supreme Court in *Saint Francis College* v. *Al-Khazraji*, 481 U.S. 604 (1987), that section 1981 was intended to protect from discrimination "identifiable classes of persons who are subjected to intentional discrimination solely because of their ancestry or ethnic characteristics." Indeed, that discrimination is national origin discrimination prohibited by Title VII as well.

Claims asserted under this new section are commenced with the timely filing of a charge of discrimination with the EEOC and/or state or local fair employment agency. The investigation and conciliation functions of the fair employment agencies normally applicable to such charges will continue to be applied. Only after the agency has completed its functions and/or released the complaining party to pursue independent legal action by issuance of a Notice of Right to Sue will the plaintiff be empowered to file a lawsuit in federal district court. In this regard the bill does not alter existing law.

In addition to the above-cited restrictions, the following limitations also are placed on the damages available to each individual complaining party for each cause of action brought under section 1981A:

Such damages cannot include backpay, the interest thereon, frontpay, or any other relief authorized under Title VII;

The amount of nonpecuniary damages, future pecuniary damages and punitive damages shall not exceed $50,000 for employers with 100 employees or less, $100,000 for employers with more than 100 employees and fewer than 201 employees, $200,000 for employers with more than 200 and fewer than 501 employees, and $300,000 for employers with more than 500 employees;

While compensatory damages may be awarded against federal, state and local government agencies, punitive damages may not; and

Where a discriminatory practice involves the provision of a reasonable accommodation under the Americans with Disabilities Act, no compensatory or punitive damages may be awarded where the covered entity demonstrates good faith efforts to make the reasonable accommodation.

It is the intention of the sponsors of this legislation to make the perpetrators of intentional discrimination liable for the nonwage economic consequences of that discrimination up to the full extent of the stated limitations.

2. Jury Awards

The bill clarifies that as to claims for which compensatory or punitive damages are sought, any party may demand a trial by jury. Because compensatory and punitive damages may not be sought with regard to claims based on the disparate impact theory under the rules set forth in proposed section 703(k), a jury trial would not be available for such claims.

Claims which involve a demand for damages (and a consequent right to a jury trial) may be brought in the same action as claims brought using the disparate impact theory under the rules set forth in proposed section 703(k). The courts shall continue to exercise their discretion in the handling of such hybrid actions as they have in handling the many hybrid actions brought under Title VII/section 1981 in the past.

Judges currently serve as an adequate check on the discretion of juries to award damages. Consistent with the requirements of the Seventh Amendment, they can and do reduce awards which are excessive in light of a defendant's discriminatory conduct or a plaintiff's resulting loss.

In addition, the bill specifically provides that the jury shall not be informed of the existence or amount of the caps on damage awards. Thus, no pressure, upward or downward, will be exerted on the amount of jury awards by the existence of the statutory limitations.

SECTION 8: BURDEN OF PROOF IN DISPARATE IMPACT CASES

Under section 703(k)(1), a disparate impact suit is brought in three stages. The legislation is not intended to alter the definition of the term of art "disparate impact" as it has been developed by the courts since 1971. Initially, the plaintiff has the burden of providing a prima facie case. *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405, 425 (1975). A prima facie case is established when a plaintiff identifies a specific employment practice and demonstrates that the practice causes a disparate impact, except as described below.

Our intention with respect to the "business necessity" issue is reflected at S15272 of the Congressional Record on October 25, 1991.

The bill requires a complaining party to demonstrate that a particular employment practice *causes* a disparate impact. By use of the "cause," the bill should not be read to require a plaintiff "to eliminate all alternative explanatory hypotheses for a disparate impact." See *Allen* v. *Seidman*, 881 F.2d 375, 380 (7th Cir. 1989). For example, if an employment test creates a disparate impact on the basis of race, a plaintiff would not be required to prove that a disadvantaged background was not an alternative, possible hypothesis for the disparate impact.

Our intention with respect to the "cumulation" issue is reflected at S15276 of the Congressional Record on October 25, 1991.

With respect to the need for specificity, there is one exception to the requirement that a complaining party identify each practice that causes a disparate impact. In order to invoke that exception, the complaining party must "demonstrate to the court that the elements of a respondent's decision-making process are not capable of separation of analysis", and in that instance "the decision-making process may be analyzed as one employment practice."

For example, if employment decision-makers cannot reconstruct the basis for their employment decisions, because uncontrolled discretion is given to a respondent's employment decision-makers, then the decisionmaking process may be treated as one employment practice and need not be identified by the complaining party as discrete practices. See *Sledge* v. *J.P. Stevens & Co.*, 52 EPD para. 39,537 (E.D.N.C. Nov. 30, 1989). Similarly, if a complaining party proves to a judge that it is impossible for whatever reason to reconstruct how practices were used in a decisionmaking process, then the decisionmaking process is incapable of separation for analysis and may be treated as one employment practice and challenged and defended as such.

Our intention with respect to the "alternative practices" issue is reflected at S15276 of the Congressional Record on October 25, 1991.

SECTION 9: PROHIBITION AGAINST DISCRIMINATORY USE OF TEST SCORES

Section 9 amends section 703 of the Civil Rights Act of 1964, 42 U.S.C. 2000e–2, by adding a new subsection (1) to ban the practice of "race-norming" and other practices used to alter or adjust the scores of job-applicants on employment-related tests used by an employer to select or promote employees. The language of the section is broad and is designed to prohibit any action taken to adjust test scores, use different cutoff scores for selection or promotion, or otherwise adjust or alter in any way the results of employment-related tests on the basis of race, color, religion, sex, or national origin.

By its terms, the provision applies only to those tests that are "employment related." Therefore, this section has no effect in disparate impact suits that raise the issue of whether or not a test is, in fact, employment related. The prohibitions of this section only become applicable once a test is determined to be employment related.

Section 9 does not purport to affect how an employer or other respondent uses accurately reported test scores, or to require that test scores be used at all.

SECTION 14: EXPANSION OF RIGHT TO CHALLENGE DISCRIMINATORY SENIORITY SYSTEMS

Legislation is needed to address the problems created by the Supreme Court's decision in *Lorance* v. *AT&T Technologies, Inc.* 109 S.Ct. 2261 (1989). The plaintiffs in *Lorance* alleged that a seniority rule governing layoffs had been adopted for the purpose of discriminating against women. The seniority rule was first adopted in 1979. The seniority rule was not applied until the fall of 1982, when the company invoked it to lay off Lorance and the other plaintiffs. The plaintiffs promptly filed Title VII charges with the EEOC, asserting that the rule applied to them in 1982 had been motivated by discrimination.

A majority of the court held that the plaintiffs' claims were time barred because the statute of limitations begins to run when the seniority rule was adopted, not when it is applied to the complaining party. The unfairness of this rule is apparent. The holding in this case would require employees seeking to protect their interests to challenge immediately any new rule or practice that might conceivably be applied to adversely affect them in the future.

Under section 14, the limitation period begins to run on the later of the date when an alleged discriminatory seniority system is adopted, when an individual becomes subject to a seniority system, or when an individual aggrieved is injured by the application of the seniority system.

Unfortunately, some lower courts have begun to apply the "*Lorance* rationale" outside of the context of seniority systems, for example to bar challenges to allegedly discriminatory promotion policies unless the challenge is made at the time the policies are adopted, rather than when they were applied to deny a promotion to the claimant. *Davis* v. *Boeing Helicopter Co.* (E.D. Pa. October 24, 1989). It has also been applied to bar a challenge under the Age Discrimination in Employment Act to a suit challenging application of an early retirement plan. *EEOC* v. *City Colleges of Chicago*, No. 90–3162 (7th Cir. Sept 16, 1991). This legislation should be interpreted as disapproving the extension of this decision rule to contexts outside of seniority systems.

This legislation should not be interpreted to affect the sound rulings of the Supreme Court regarding "continuing violations" theory under Title VII. See *Delaware State College* v. *Ricks*, 449 U.S. 250 (1980).

SECTION 21: SEVERABILITY

Section 21 expresses the sponsors' intention that, in the event that any section, subsection, or provision of the Act, any amendment made by the Act, or any application of a section, subsection, or provision of the Act to any person or in any circumstances is held invalid, the remainder of the Act, of the amendments made by the Act, or the application of such provision to other persons and in other circumstances shall not be affected.

SECTION 22: EFFECTIVE DATE

The bill provides that, unless otherwise specified, the provisions of this legislation shall take effect upon enactment and shall not apply retroactively.

John C. Danforth, William S. Cohen, Mark O. Hatfield, Arlen Specter, John H. Chafee, Dave Durenberger, James M. Jeffords.

Mr. KENNEDY. Mr. President, as the principal Democratic sponsor of the Danforth-Kennedy substitute amendment, I want to state my agreement with the views set forth in Senator DANFORTH's interpretive memorandum.

I would also like to state, however, my understanding with regard to the bill's effective date. Section 22 of the bill states that "[e]xcept as otherwise specifically provided, this Act and the amendments made by this Act shall take effect upon enactment." Section 22(b) provides that nothing in the act shall apply to any disparate impact case for which a complaint was filed before March 1, 1975, and for which an initial decision was rendered after October 30, 1983.

It will be up to the courts to determine the extent to which the bill will apply to cases and claims that are pending on the date of enactment. Ordinarily, courts in such cases apply newly enacted procedures and remedies to pending cases. That was the Supreme Court's holding in *Bradley* v. *Richmond School Bd.*, 416 U.S. 696 (1974).

And where a new rule is merely a restoration of a prior rule that had been changed by the courts, the newly restored rule is often applied retroactively, as was the case with the Civil Rights Restoration Act of 1988. That is what the courts have held in *Leake* v. *Long Island Jewish Medical Center*, 695 F. Supp. 1414 (E.D.N.Y. 1988), aff'd, 869 F.2d 130 (2d. Cir. 1989), *Ayers* v. *Allain*, 893 F.2d 732 (5th Cir. 1990), and *Bonner* v. *Arizona Department of Corrections*, 714 F. Supp. 420 (D. Ariz. 1989). But see *DeVargas* v. *Mason & Hanger-Silas Mason Co., Inc.*, 911 F.2d 1377 (10th Cir. 1990). It was with that understanding that I agreed to be the principal Democratic sponsor of the Danforth-Kennedy substitute.

I would also like to state my views on the relationship between S. 1745 and the Americans with Disabilities Act of 1990 [ADA].

Section 10 of S. 1745 provides that an unlawful employment practice is established when a plaintiff demonstrates that a protected class status was a motivating factor for an employment practice. This policy is comparable to the standard already adopted under the ADA. (See e.g., Sen. Rpt. No. 101–116 at page 45; H. Rpt. No. 101–485, Part 2, at 85–86.)

Other sections of the Civil Rights Act of 1991, which amend section 706 of title VII, are explicitly incorporated into the ADA through section 107(a) of the ADA.

Section 5 of S. 1745 states explicitly that damages are available under the ADA for all cases of unlawful intentional discrimination; that is, not an employment practice that is unlawful

because of its disparate impact, or for violations of the reasonable accommodation provision in section 102(b)(5) of the ADA.

Causes of action for disparate impact are limited to section 102(b)(3)(A) and part of section 102(b)(6) of the ADA—except for practices intended to screen out individuals with disabilities.

Section 1977A(a)(3) provides that damages are not available if the covered entity demonstrates good faith efforts, in consultation with the person with the disability who has informed the covered entity that accommodation is needed, to identify and make a reasonable accommodation that would provide such individual with an equally effective opportunity and would not cause an undue hardship on the operation of the business.

It is my intent that a demonstration of good faith efforts must include objective evidence that the process of determining the appropriate reasonable accommodation has been conscientiously complied with by the covered entity. This process is described in the Senate Report accompanying the ADA (S. Rpt. 101–116) at pages 34–35 and the analysis accompanying the final regulations implementing title I of the ADA promulgated by the EEOC (56 Fed. Reg. 35748–49 (July 26, 1991)).

The legal mandate that the reasonable accommodation provides the individual with a disability an "equally effective opportunity" means an opportunity to attain the same level of performance, or to enjoy the same level of benefits and privileges of employment as are available to the average similarly situated employee without a disability. (See analysis by the EEOC accompanying the regulation implementing title I of the ADA (56 Fed. Reg. 35748 (July 26, 1991)).

Mr. KOHL. Mr. President, I rise in support of the Danforth-Kennedy substitute to the Civil Rights Act of 1991. After more than a year of opposition by the President—often including volatile political rhetoric on quotas—we now have a bipartisan civil rights bill that is substantially similar to what was first introduced over a year and a half ago. The sad truth is that while scores of individuals suffer from discrimination in the workplace, politics plays a controlling role in the President's strategy.

It is painfully obvious that the 1992 election cycle has begun. In recent months the civil rights debate has been extremely misleading, focusing on issues meant to distract rather than inform. But make no mistake, this proposal—the Danforth-Kennedy compromise—addresses substantive issues.

Mr. President, for nearly three decades title VII of the Civil Rights Act has been the cornerstone of protection against employment discrimination. However, in the past few years the protection provided by title VII was eroded by several Supreme Court decisions. This bipartisan measure before the Senate properly reverses or modifies those decisions and, in addition, enables victims of intentional discrimination based on sex, religion, or disability to be compensated for bias on the job. This is a bill against discrimination and a bill against sexual harassment.

Before the 1989 Supreme Court case of Wards Cove Packing, Inc. versus Atonio, the burden of proof in a "disparate impact" discrimination case, a case where the business practices in question are fair in form, but discriminatory in practice, rested with the employer. In Wards Cove, the Court shifted the burden to the employee. This bill returns to pre-Wards Cove law, and places the burden of proof on the employer.

Under this proposal employers must justify work rules if the employee shows that the rules have a disparate impact on women and minorities. That is what the Supreme Court held in Griggs. That is what we are trying to return to. Chief Justice Burger—who wrote the unanimous Griggs decision said that civil rights laws prohibit not only overt discrimination, but also "practices that are fair in form but discriminatory in operation." In other words, victims of insidious employers, as well as those who are hurt by outright bigots, should have the same remedy in court.

To this end, the substitute requires that job practices with disparate impact must be "job related for the position in question and consistent with business necessity." Although "business necessity" is not defined in the substitute, the substitute does reference business necessity concepts as they are discussed in Griggs.

In addition to addressing the burden of proof issue, the substitute also makes compensatory and punitive damages available in cases of intentional employment discrimination. It bears repeating that these damages are available only in intentional discrimination cases, not in disparate impact cases. Compensatory damages include such things as medical costs, emotional pain or suffering, future pecuniary losses, and mental anguish. And punitive damages are available only if an employee demonstrates that the employer engaged in discriminatory practice with malice or reckless indifference to the employee's federally protected rights.

The issue of damages is one of the more controversial areas addressed in this legislation. The compromise language of the substitute establishes a four-tiered structure limiting awards, depending on the number of employees at a particular firm. Total pain and suffering, future pecuniary losses, and punitive damages are capped at $50,000 for companies with 100 employees or fewer. For companies with 101 to 200 employees damages are limited to $100,000. Firms which employ between 201 and 500 employees face a maximum of $200,000 in damages. And companies with more than 500 employees are limited to $500,000 damages.

Mr. President, with most compromises, few parties are completely satisfied with the end product. That is the case here. Those business interests fearful of large damage awards argued forcefully for lower dollar limits. And those advocating the interests of discrimination victims, and in particular women, sought to eliminate damage caps all together. Neither side thinks the compromise language is perfect, but it is a vast improvement over current law and its passage is long overdue. It should have become law long ago, and probably would have, had the issue not become embroiled in an ugly game of partisan politics.

Nevertheless, even if we enact this important legislation—and in light of President Bush's change of heart, enactment seems certain—job equality will not suddenly come to pass. Recent studies have indicated as much, suggesting that it will take decades for anything close to income parity for women and minorities. Congress cannot simply wield a magic wand and change the way our country views the problem of discrimination.

Why is this so? I believe it is because of fear. Fear that fuels prejudice. At a time when the economic pie grows smaller and smaller, many people do not want to share their piece with others. Especially with others they perceive to be different, or weak, or minorities.

This fear takes many forms. It is unequal pay for equal work. It is the glass ceiling encountered by women and minorities in corporate America. It is a vote cast for a candidate who runs on an unspoken platform of racism.

Sadly, the Civil Rights Act will not eliminate this fear. We cannot legislate against fear. We cannot legislate against immorality, and we cannot legislate against hatred. But we can pass laws which punish those who act on these fears by discriminating. We can say to those who choose to treat women and minorities as second-class workers that there is a severe cost for such actions. And we can send a message to the majority of Americans—yes, women and minorities combined are the majority—that in the eyes of the law they are equal.

Thank you, Mr. President.

Mr. DECONCINI. Mr. President, I have an issue of utmost concern to Hispanic and other minority constituents in Arizona concerning national origin discrimination and the application of title 42, United States Code, section 1981, the Federal statute guaranteeing equal rights under the law. Section 1981 does not specifically prohibit either na-

tional origin discrimination or racial discrimination.

The Supreme Court, in its 1976 decision Runyon versus McCrary, interpreted section 1981 to prohibit all racial discrimination in the making of private as well as public contracts, including employment contracts. In Saint Francis College versus Al-Khazarahi, a 1987 decision of the Supreme Court, section 1981 was construed to extend to discrimination based on "ancestry or ethnic characteristics," both of which are part of the accepted meaning of "national origin."

The Court in St. Francis College demonstrated that when Congress enacted this statute it intended to protect from discrimination a wide variety of groups that were then considered racial groups but are now considered national origin or ethnic minority groups. Characterictics that identify national origin groups are ethnic characteristics such as language, speech accent, culture, ancestry, birthplace, and certain physical characteristics.

Since that St. Francis College decision confirming the coverage of national origin groups within section 1981, there has been some confusion among courts applying this precedent. I would like to reaffirm my understanding that Congress originally intended and continues to intend that section 1981 cover and apply to what are now known as national origin groups. Furthermore, to state a valid cause of action under section 1981, it should be sufficient for a complaining party to allege discrimination based solely on national origin, rather than racial discrimination.

Congress needs to clearly recognize that section 1981 prohibits intentional national origin discrimination as well as racial discrimination in accordance with the St. Francis College decision. National origin groups such as Hispanics and racial groups such as native Americans and Asian-Americans have suffered from institutional segregation and discrimination, and were intended to be covered under section 1981.

AMENDMENT ON DISCRIMINATION TESTERS

Mr. SIMPSON. Mr. President, I would like to clarify my position on an amendment which I had intended to offer to S. 1745 which would place limits on discrimination testers.

I had intended to offer an amendment to this legislation which would have established certain rules for persons who pose as job applicants solely to test whether that employer might be discriminating. My amendment would not prevent such testing programs—as many in the business community advocate—but rather would only prohibit these discrimination testers from misrepresenting their education, experience, or other qualifications when applying for the job vacancy.

There have been two programs that I am aware of where spurious job applicants have lied about their credentials in order to test whether employers are discriminating: First, in a 1989 urban institute study; and second, in a case pending in Federal district court here in Washington: Fair Employment Council versus BMC Marketing Corporation, my concern over these testing programs is that, if the testers are allowed to lie about their credentials, then the employers might not be rejecting the minority applicants because of a discriminatory motive, but rather because the employer did not find their representation of their credentials credible. Some reviewers of the Urban Institute study observed that it was the educational difference of the job applicants—not a discriminatory motive on the part of the tested employers—which caused any disparities in hiring.

I am very concerned about false positives in the employment discrimination areas. As we have just seen from the Clarence Thomas hearings, the mere allegation of discrimination or harassment can have devastating effects. I simply want to avoid a situation where an employer is unfairly charged with discriminating, when in fact he or she was making a valid choice of employees based on education, experience or other qualifications.

Mr. President, it simply is not fair to employers to decide whether they have discriminated based on job applicants who have lied about their résumés.

Let me place in the RECORD the copy of my initial amendment on testers, and the EEOC's response to that amendment.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

On page 19, following line 23, insert the following new section:

SEC. 15A. PROHIBITION ON FRAUD OR MISREPRESENTATION BY PERSONS TESTING THE EXISTENCE OF EMPLOYMENT DISCRIMINATION.

Section 709 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–8) is amended by inserting at the end the following new subsection:

"(f)(1) In any program conducted, utilized, or approved by the Commission that is designed to test the existence of unlawful employment practices in section 703, no purported prospective employee may use fraud or misrepresentation when presenting the education, experience, or other qualifications of the prospective employee in an attempt to apply for a job vacancy.

"(2)(A) No charge filed by or on behalf of a person who uses fraud or misrepresentation in presenting qualifications as described in paragraph (1) shall be valid. The Commission shall dismiss such a charge and take no further action based upon such a charge.

"(B) The Chairman of the Commission shall take an action covered by subchapter II of chapter 75 of title 5, United States Code, against any officer or employee of the Commission who takes any action pursuant to the charge described in paragraph (2) knowing that the purported prospective employee used fraud or misrepresentation in an attempt to apply for a job vacancy.

"(3) No civil action brought in Federal court by or on behalf of a person who uses fraud or misrepresentation in presenting qualifications as described in paragraph (1) shall be valid. The court before which the civil action is brought shall dismiss the action.".

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Washington, DC.

Hon. ALAN SIMPSON,
U.S. Senate, Dirksen Senate Building, Washington, DC.

DEAR SENATOR SIMPSON: I have been asked by a member of your staff to comment on a proposed amendment to the Civil Rights Act of 1991 that would prohibit misrepresentation by persons testing the existence of employment discrimination. It is my experience that unlawful hiring discrimination is still quite prevalent in the United States and that it is a particularly difficult type of discrimination to detect. It is my view, and it has long been my position, that testing for discriminatory hiring practices by persons who apply for employment, but who do not intend to accept employment, is one powerful weapon that is available in the battle against hiring discrimination. On November 20, 1990, I approved an EEOC policy guidance setting forth the EEOC's position that "testers" have standing to file charges under title VII of the Civil Rights Act of 1964. However, this does not mean EEOC can utilize Agency employees as testers.

Because I fear that a prohibition against misrepresentation by "testers" will effectively preclude their use, I do not favor such a prohibition.

Sincerely,

EVAN J. KEMP, Jr.,
Chairman.

Mr. SIMPSON. Frankly, I am quite astounded by the reply from Chairman Evan Kemp, someone whom I have the highest respect for, and with whom I agree on nearly every other civil rights issue. In essence, Chairman Kemp is saying that, unless we allow testers to lie about their credentials, the testing program cannot be operated. That is surely disturbing news to any employer.

In my mind, that is no answer at all. If we cannot run a fair testing program with a minimal amount of deceit—and mind you, I am already accepting the deceit that the testers practice when they assert they are actually interested in employment—then we should not run testing programs at all. However, I do not believe such a serious level of deceit is necessary. I believe a fair testing program is possible which would utilize testers who are presenting their own resumes. I would have no objection to such a program.

Nonetheless, given my great respect for the EEOC, I then proposed a compromise amendment which did two reasonable things: First, ordered a GAO report on the reliability of testing programs which depended on testers misrepresenting their age, experience, or other qualifications; and second, suspended any EEOC final action on charges based on tester data until GAO reported to Congress. This amendment did not bar EEOC from accepting or in-

vestigating tester-based charges, nor did it prevent EEOC from moving forward to final action on such a case once the 6 months was up—no matter what the GAO found.

I now place in the RECORD a copy of that amendment, and the EEOC's rejection of that proposal as well.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Insert at the appropriate place the following new section:

SEC. . STUDY ON MISREPRESENTATION BY PERSONS TESTING THE EXISTENCE OF EMPLOYMENT DISCRIMINATION.

(a) REPORT.—(1) The Comptroller General shall conduct a study on the reliability of any program designed to test the existence of unlawful employment practices described in section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2) which utilizes purported prospective employees who misrepresent their education, experience, or other qualifications.

(2) The report referred to in paragraph (1) shall be submitted within 180 days after the date of enactment of this Act to the Committees on the Judiciary of the Senate and House of Representatives, to the Committee on Labor and Human Resources of the Senate, and to the Committee on Education and Labor of the House of Representatives.

(b) ACTIONS OF COMMISSION.—The Equal Employment Opportunity Commission shall issue no right to sue letter based on charges of discrimination which rely on data developed by any program described in subsection (a) before the report described in such subsection has been delivered to the appropriate committees of Congress.

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Washington, DC, October 29, 1991.

Hon. ALAN SIMPSON,
U.S. Senate, Dirksen Senate Building, Washington, DC.

DEAR SENATOR SIMPSON: I have been asked by a member of your staff to comment on a proposed amendment to the Civil Rights Act of 1991 that would authorize a study on misrepresentation by persons testing the existence of employment discrimination. I have no objection to the Comptroller General conducting a study on the reliability of a program designed to test the existence of unlawful employment practices under Title VII.

However, I do not favor the proposal prohibiting the Commission from issuing a finding of discrimination or a right to sue letter in the interim.

Sincerely,

EVAN J. KEMP, Jr.,
Chairman.

Mr. SIMPSON. Needless to say, Mr. President, I find EEOC's position on this proposal to be quite remarkable. What EEOC is saying then is that it wants to be able to give plaintiffs who base their charges on tester data the right to sue in Federal court—even before we know whether tester programs founded on misrepresentation are reliable indicators of discrimination. Mr. President, there are serious adverse consequences for defendants in such cases: The most egregious of those adverse consequences are terribly heavy legal fees.

Let me insert in the RECORD at this point a letter from the Center for Individual Rights, which is representing the defendant in the suit in Federal district court based on tester data: BMC Marketing Corp. This small, five-person company has incurred legal fees that exceed $85,000 thus far—and the court has not yet even ruled on the defendant's motion to dismiss.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

CENTER FOR INDIVIDUAL RIGHTS,
Washington, DC, October 18, 1991.

Hon. ALAN K. SIMPSON,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR SIMPSON: I am very pleased to learn of your interest in the issue of whether federal courts should be willing to recognize race discrimination claims brought by "testers" (i.e., persons who apply for employment with false resumes and with no intent to accept a job, but instead are being paid to look for and discover instances of employment discrimination). The issue is one of exceptional importance to all employers and is in particular need of Congressional scrutiny in light of the Equal Employment Opportunity Commission's recent and, to my mind, wholly untenable decision to accept employment discrimination charges from "testers."

The Center for Individual Rights ("CIR") is currently involved in one of the few federal cases raising the issue of whether testers should indeed be granted standing in the employment discrimination context: *Fair Employment Council, et al.* v. *BMC Marketing Corporation*. CIR is representing the defendant in the case, BMC, and we have filed a motion to have the plaintiff's lawsuit dismissed. We believe that a ruling in our favor will have a major impact in deterring individuals and groups from concocting these types of abusive lawsuits in the future and we anticipate that our motion will be argued and decided early next year.

To help familiarize you and your staff with the underlying merits of the litigation, I have taken the liberty of enclosing a copy of the brief which we filed in support of our motion to have the case dismissed. It sets out our arguments in detail and there is no need to dwell on them in this letter. However, the "hidden" financial aspects and inequities of the litigation are a different matter. The case has generated substantial costs to our client and you may find a word or two about them to be useful to your general understanding of the problems posed by allowing "tester" suits.

First, you should know that BMC is a small, female-owned, job referral agency which is faring quite poorly in the midst of the current economic recession. In fact, BMC was nearly bankrupt at the time that the Fair Employment Council's lawsuit was filed. BMC's principals did not have the financial resources to hire any attorney—let alone one skilled in the intricacies of federal civil rights litigation—to defend the company in court against the charges made against it and were it not for CIR's involvement,[1] it is likely that the lawsuit would have driven the company completely out of business.[2]

Second, you should know that the plaintiffs in the suit, which consist of two black "testers" as well as the organization which trained and paid them to apply for jobs through BMC, the Fair Employment Council ("FEC") of Greater Washington, are not similarly disadvantaged. Needless to say, the two phoney job testers are not having to foot the bill for any expenses generated in the case and as for the FEC, it is having a bevy of lawyers at Arnold & Porter, one of Washington's largest and most powerful firms, provide it will all of the free legal services it requires.

In addition to these inequities in size and manpower, there is the matter of our client's legal bills. Shortly after agreeing to defend BMC, the Center allocated $40,000 of its total operating budget to this one case. (As a public interest law firm, we are, of course, providing our legal services to BMC on a *pro bono* basis.) As our legal strategy was (and remains) to get the lawsuit dismissed early on in the proceeding, we believed that this sum would be more than adequate to achieve that goal. We also believed, and BMC agreed, that we should hire the law firm of Paul, Hastings, Janofsky & Walker to provide us with "of counsel" assistance in the case.[3]

Unfortunately, things did not turn out exactly as planned. The case against our clients was filed in the U.S. District Court for the District of Columbia on May 2 of this year. In the short five months time since then, BMC has already run up legal fees and costs for Paul, Hastings' services in excess of $85,000. This is a staggering sum of money, especially if one considers that our motion to dismiss has yet to be argued and that, if it is denied, BMC may have to face a full-blown trial on the merits.

The monetary predicament BMC finds itself in sets a sobering example to other employers who may be similarly targeted by the FEC in the future. Indeed for many of these struggling companies, the only rational option may be to settle the discrimination claims which have been alleged against their companies rather than fight them out in court. If only for this reason, the fact that "testers" are able to present themselves to unsuspecting employment agencies as legitimate job seekers and then force them to spend tens of thousands of dollars in legal fees defending concocted legal claims of racial discrimination is truly unconscionable.

I hope you may be able to do something about this sad state of affairs and trust that you or the members of your staff will not hestiate to contact me if I can provide you with additional information or be of any other assistance to you as regards this important subject.

Thank you very much.

Yours truly,

MICHAEL P. MCDONALD,
President and General Counsel.

Mr. SIMPSON. Mr. President, these legal fees are outrageous. I think no employer should be subject to such fees where the whole basis for the suit—a finding of discrimination based on testers who lie about their résumés—has not yet even been proven "reliable."

Mr. President, the managers of this bill have told me they wish to avoid

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[1] CIR is a two-attorney law firm with an annual operating budget of $450,000. Information on CIR also accompanies this letter.

[2] BMC's franchisor, Snelling and Snelling, is able to afford legal counsel however it is not yet a party to the litigation and, in any event, both it and BMC's insurer have notified BMC that they will not pay for any costs it incurs in defending this lawsuit.

[3] Paul, Hastings has litigation and employment law experience which CIR lacks, and, in addition, generously agreed to provide us with substantial amounts of *pro bono* services of its own in connection with the normal, billable legal services which it performed on BMC's behalf.

amendments which would cause a conference with the House on this bill. Quite frankly, I fail to see how a 6-month delay in the processing of cases based on tester data would cause a conference. However, in deference to my colleagues, I will save this amendment for yet another day. Nonetheless, let me make it clear that my resolve on this issue has not changed one whit.

U.S. employers are only asking for fairness from the Government, and from the laws which we apply to business. Fraud, misrepresentation, lying, and deceit are fundamentally unfair. I will work hard to change our policy on this matter during the remainder of this Congress.

Mr. BROWN. Mr. President, earlier this week we voted unanimously to approve a Senate resolution which condemned sexual harassment and pledged to consider appropriate changes in the laws of the United States and the rules of the Senate. We should not forget this commitment.

Mr. KENNEDY. I agree with the Senator from Colorado. This resolution cannot represent a conclusion of our efforts in this area. The only conclusion that one can reach from reading the newspapers and the letters to the editor is that the attention of the Nation has been focused on this issue, and on the terrible consequences to individuals who are subjected to sexual harassment in the course of their efforts to work, to earn a living, and to contribute to our economy and society.

Mr. BROWN. The issue of sexual harassment in the workplace is one of paramount concern. The EEOC has developed guidelines and regulations relating to sexual harassment in the workplace. I intended to offer an amendment to this bill which would codify our prohibitions on sexual harassment. We need to expand our efforts to ensure this type of behavior does not occur in the workplace.

Mr. KENNEDY. Sexual harassment is a very important issue, and the Senate should carefully consider whether additional changes to the law, such as eliminating the caps on damages in this bill, are required in order to safeguard the rights of our citizens in the workplace. I oppose the caps on damages for sex discrimination. I will work to have those caps eliminated expeditiously, and I hope the Senator from Colorado will join me. I would suggest that it would be appropriate for the Senate to hold hearings on the state of the law regarding this very serious problem.

Mr. BROWN. These hearings can provide a valuable step forward on the important issue of sexual harassment, and the Senator from Massachusetts is to be commended for taking the lead in this matter.

Mr. DECONCINI. I commend Senator KENNEDY for his leadership in the area of civil rights and would like to know if it is also his understanding that the Supreme Court's holding in St. Francis College versus Al-khazraji is a correct interpretation of section 1981?

Mr. KENNEDY. Yes, I believe the decision is a correct interpretation of section 1981.

Mr. DECONCINI. Is there anything in the substitute to S. 1745 that would affect in any way the Court's holding in this case?

Mr. KENNEDY. No, the bill does not in any way repeal the St. Francis College decision. The discrimination described by the court in St. Francis College is, in effect, national origin discrimination, which is the term used in title VII of the Civil Rights Act to identify this particular type of discrimination.

Mr. DECONCINI. Is it the Senator's understanding that "national origin discrimination" is discrimination based upon characteristics common to a specific ethnic group, such as ancestry, culture, linguistic characteristics—including language and speech accent—physical characteristics, and birthplace?

Mr. KENNEDY. Yes, that is my understanding.

Mr. DECONCINI. Consistent with this interpretation, would the Senator agree that Congress intended that, to state a cause of action under section 1981, it is sufficient to allege discrimination based solely upon national origin.

Mr. KENNEDY. Yes, I agree.

Mr. DECONCINI. I thank the Senator. I also have another matter that I would like to discuss. This is the issue of workplace rules which require the speaking of only one language. Many of my constituents have brought to my attention an increasing problem with nonjob related discipline and termination of people for speaking languages other than English in the workplace. Is the Senator aware of the EEOC regulations dealing with this problem?

Mr. KENNEDY. Yes, the EEOC promulgated such regulations in 1980.

Mr. DECONCINI. These regulations reflect the fact that the primary language of an individual is often an essential national origin characteristic. Does the Senator agree that these regulations found in 29 CFR 16067.7 provide a sound and effective method for dealing with this problem?

Mr. KENNEDY. Yes, I agree that this regulation has worked well during the past 11 years it has been in effect.

Mr. DECONCINI. Does the substitute to S. 1745 in any way adversely affect the EEOC regulation on language use in the workplace.

Mr. KENNEDY. No, it does not.

Mr. DECONCINI. Therefore, if S. 1745 is passed and signed into law by the President, the EEOC regulations would be consistent with title VII as amended by S. 1745.

Mr. KENNEDY. That is correct.

Mr. DECONCINI. I would like to thank my distinguished colleague from Massachusetts. That is all I have.

Mr. LEAHY. Mr. President, I rise today to speak about a matter of crucial importance to the American people, the Civil Rights Act of 1991.

The United States was founded on the fundamental principles that all men and women are created equal; that they are endowed with the inalienable right to prosper through hard work and ingenuity.

However, the sobering fact is that for many citizens, the promise of equal opportunity—a centerpiece of our democracy—remains illusory. The Civil Rights Act of 1991 is an effort to vindicate this founding principle. It is an effort to adjust the reality of life in the United States today to accord with the history lessons our children are taught daily in school.

REVERSAL OF RECENT SUPREME COURT CASES

The act overturns several recent Supreme Court cases which, taken together, severely erode protections that have benefited Americans for decades.

The act restores to the employer the burden of justifying employment practices that have a discriminatory impact on minority hiring. This bill returns the law of disparate impact and in particular business necessity to the condition it was in from 1971 until the Supreme Court's 1989 decision in Wards Cove Packing versus Atonio.

By overturning Martin versus Wilks and by limiting challenges to consent decrees, the act also creates incentives to settle civil rights cases and provides a measure of finality to complicated litigation.

Furthermore, the act reinvigorates section 1981 of the Civil Rights Act of 1866, a law which, prior to the Supreme Court's 1989 decision in Patterson versus McLean Credit Union, had been used effectively since the 19th century to combat racial discrimination The Patterson decision drastically limited section 1981's application to circumstances involving only the formation and enforcement of contracts. The Civil Rights Act of 1991 returns the originally intended broad scope of this statute.

The act also restores protections for American workers employed in American companies abroad and allows workers to challenge discriminatory seniority plans that are applied against them.

STRENGTHENING REMEDIES FOR INTENTIONAL DISCRIMINATION

The Civil Rights Act of 1991 puts teeth into the sanctions faced by employers who purposefully and intentionally discriminate against their employees. For the first time, women and the disabled could recover damages and have jury trials for claims of intentional discrimination. But even this bill does not do enough to protect the women of this Nation.

Violations of fundamental civil rights must be taken seriously in our society. Too often, victims of discrimination end up as victims of the process. It is the person who harasses, who refuses to hire, who passes over a proven employee's promotion, who is the wrongdoer. And it is high time that Federal civil rights law recognized this by offering meaningful remedies.

Under existing civil rights laws, the best a woman who is intentionally harassed in the workplace can hope for from our legal system is a court order saying that her boss should stop. If her boss starts to harass her again, the only thing she can do is go back to court to get yet another order telling her boss to behave. Still without the improvements of the Civil Rights Act of 1991, there would be no penalty for the employer, no adequate compensation for the victim.

If a woman were forced to quit her job as a result of intentional harassment, the best she could hope for from current civil rights laws is backpay and reinstatement to a job that her employer may already have made unbearable. She would not be entitled to recover for the damage to her professional career or for the psychological and physical trauma she may have suffered. Nor would her boss be subject to any sort of punitive damages to deter misconduct. Thus, faced with little change of any meaningful recovery, and confronted by the very real prospect of an assault on her character, women too often fail to speak out.

The same is true for the disabled, who are too often the target of intentional discrimination.

Contrast our civil rights laws with those protecting property rights. If I back into someone else's car in the parking lot outside, I can be brought to court and forced to explain my conduct before a jury. If the jury so decides, I can be required to compensate the owner of the car for damages, even if I did not act intentionally. If I acted maliciously, I can be subjected to punitive damages or even criminal penalties.

This is the norm. This is how our judicial system works for most legal claims.

But it is not how the system works for civil rights. If, for example, an employer intentionally harasses or otherwise persecutes an employee solely on account of race, the current civil rights laws cannot require the employer to compensate that person fully for the damage he has caused, no matter how great or how real. Nor can the employer be forced to pay punitive damages no matter how outrageous his conduct has been. By overturning the Supreme Court's decision in Patterson versus McLean Credit Union, the Civil Rights Act of 1991 would remedy this injustice.

The penalties for civil rights violations—for depriving citizens of the fundamental principles of equality and fairness on which this Nation was founded—should not be inferior to legal claims for breaching a contract, violating the Sherman Act, or infringing a copyright. This bill goes a long way toward setting this priority straight and recognizing the importance of protecting all Americans from discrimination by providing a meaningful legal remedy.

This act achieves these significant ends while recognizing the danger of unnecessarily shackling free enterprise. In the careful wording of its provisions, this act takes into account employers' legitimate interests in minimizing the threat of litigation and governmental intrusion into their businesses.

A WORTHWHILE COMPROMISE

While I believe this was the best bill we could get the President to sign, I, like many of my colleagues, do not believe that passage of this legislation ends the necessity for further reform in the area of civil rights. Like others, I believe that the inequity of placing limits on damages for those discriminated against on the basis of sex or disability, but not for those discriminated against on the basis of race, will need to be addressed in future legislation. However, I recognize that the current bill, as amended by the Danforth-Kenney substitute, is the product of an extremely hard-fought compromise. Senators KENNEDY, DANFORTH, and others have worked painstakingly to craft legislation that the administration would not veto.

You build a house brick by brick. In 1990, I was proud to cosponsor legislation introduced by Senators KENNEDY and JEFFORDS that would have advanced the cause of civil rights in the workplace. President Bush vetoed this proposal, dismissing it as a quota bill. He similarly promised to veto as quota bills two other compromise proposals and the unamended version of this bill, S. 1745. Now, finally, President Bush has agreed that the Danforth-Kennedy substitute is not quota legislation. I agree that this bill is not a quota bill. In my estimation, neither were its predecessors—all were compromise measures sponsored by Members of the President's party. But I am pleased that the President has seen the light and agreed to support this much-needed legislation.

While this bill is not the final chapter in providing for civil rights in this Nation, it is a large and profoundly important step. Passage of this bill is something all Americans should be proud to have achieved together.

CONCLUSION

Finally, I would like to emphasize that I hope this compromise means an end to the game of exploiting racial tensions for political advantage. I hope that the compromise reached with the administration represents a new spirit of cooperation between Congress and the White House in solving the important domestic problems this country faces.

Mr. DURENBERGER. Mr. President, before we vote on this civil rights legislation, I want to take a moment to commend the distinguished senior Senator from Missouri [Mr. DANFORTH] for his courage, his dedication, his commitment, and his effort on behalf of civil rights.

For the past 2 years, JACK DANFORTH has been on a mission. He has refused to back down in his effort to bring equity and fairness into the workplace, to right wrongs and to craft remedies that ensure that every American, no matter their race, color, creed, or sex, does not suffer employment discrimination.

He has battled our President and many others in his effort to see this bill become law. He has engaged in months of arduous negotiations with those on the left and those on the right to try to reach a workable compromise.

One of my colleagues on the Senate Labor Committee also deserves more recognition than he has received. Senator JIM JEFFORDS championed the original bill in committee. He worked to improve it in markup, and he has never skipped a beat at 100 meetings over the last 18 months to try to reconcile our many views.

Mr. President, I am pleased to cosponsor this civil rights bill and hope that when we pass the bill, a period of sharp division in our country will end. This legislation overturns several 1989 Supreme Court decisions that narrowed the scope of laws protecting minorities and women in the workplace.

This has been a long journey through what has become familiar terrain for many of us—and those of us who have been involved in this struggle pray that it will not require revisiting for some time to come.

The most controversy in this debate has centered on what the term "business necessity" means in the context of the civil rights bill. I would like to clarify this Senator's view of the meaning of the term "business necessity" as that term is used in the pending Danforth-Kennedy civil rights bill.

The Danforth-Kennedy bill uses the phrase "job-related and consistent with business necessity." As ranking member of the Disability Policy Subcommittee, and an original cosponsor of the Americans With Disabilities Act, I am quite familiar with the derivation of this phrase. This phrase was taken directly from the Americans with Disabilities Act.

The ADA codified the standards contained in the 1973 Rehabilitation Act, which in turn borrowed the disparate impact analysis adopted by the Supreme Court in Griggs versus Duke Power.

In fact, in the House Judiciary Committee Report on the ADA, the report

made clear that the term "job-related" referred to the Griggs job-performance standard, because the committee cited a Rehabilitation Act circuit court case, Prewitt versus U.S. Postal Service. That case stated that the Rehabilitation Act adopted a "Griggs-type approach in the disparate impact handicap discrimination context. [The law] require[s] Federal agencies not to use any selection criterion that 'screen out or tends to screen out qualified handicapped persons' unless the criterion * * * is shown to be 'job-related for the position in question.'"

Accordingly, Mr. President, it seems clear to this Senator that the phrase "job-related" as used in the Danforth-Kennedy bill comes directly from the ADA—and the ADA and Rehabilitation Act both adopted the Griggs job-performance standard.

Using the language of the Americans With Disabilities Act should put to rest any charges that this bill will lead to quotas. Everyone agrees that the ADA is not a quota bill; placing the same ADA language in the Danforth-Kennedy bill does not transform this bill into a quota bill.

Mr. President, this civil rights legislation is the second major revision to the landmark Civil Rights Act of 1964. Among other things, the 1964 act prohibits discrimination in places of public accommodation, in schools, and in the workplace. The first major revision occurred in 1972, when Congress addressed the fact that title VII of the Civil Rights Act did not cover Federal employees. In order to rectify this inadequacy, Congress enacted section 717 of title VII and included Federal employees within the purview of title VII.

But since 1972, it has become painfully clear that there remains another shortfall in the original 1964 bill. The 1964 act provided equitable remedies for discrimination based on race, sex, religion, and national origin, but it failed to provide for jury trials with compensatory and punitive damages. Because Federal courts allowed racial minorities to sue under section 1981 of the Civil Rights Act of 1966, victims of sexual harassment and gender discrimination had little relief available, other than an order reinstating them to their job.

Mr. President, the bill that we are considering in the Senate closes this gigantic loophole in our discrimination laws. It is one of the most important reasons that we are amending title VII of the Civil Rights Act of 1964. Many individuals during the recent nomination hearings concerning Clarence Thomas wondered why, if Anita Hill's charges were true, she did not come forward with her sexual harassment claim while she was an employee at the Equal Employment Opportunity Commission.

One possible explanation why any person who claims to be victimized by sexual harassment may not come forward is that, although they suffer great emotional trauma, their only remedy is reinstatement, possibly back pay, and a court injunction ordering the employer to cease such conduct in the future. This is hardly the type of remedy that makes victims whole for their injury, and does not serve as an effective deterrent toward future unlawful conduct.

Mr. President, the Danforth bill, of which I am a cosponsor, places caps on damages based on company size. For employers with fewer than 100 employees, compensatory, "pain and suffering," and punitive damages are capped at $50,000. For employers with between 100 and 200 employees, damages are capped at $100,000; for employers with more than 200 and fewer than 500 employees, damages are capped at $200,000, and for employers with more than 500 employees, damages are capped at $300,000.

Mr. President, although these amounts are considerable, I believe that there should be no distinction between the remedies that are available for sex discrimination and the remedies available for discrimination on the basis of race. As I indicated yesterday, I intended to offer an amendment that would have provided equity in remedies for all forms of discrimination.

But in the name of temporary compromise, in the name of getting this civil rights bill to become law, I have withdrawn that amendment. But that amendment will be back before the Senate on another day, and I will not cease to fight to remedy this inequity.

Mr. President, I urge my colleagues to vote for this bill. This measure represents an important victory in the fight against discrimination in the workplace and I hope that we can put this painful period behind us.

• Mr. KERREY. Mr. President, I rise today to express my support for the civil rights compromise, a culmination of the tireless and diligent efforts of my colleagues Senator DANFORTH and Senator KENNEDY. This legislation is just that—a compromise. It does not satisfy everyone, but I believe it will go a long way toward redressing serious civil rights problems that have arisen in the wake of recent Supreme Court decisions.

The Civil Rights Act is designed principally to restore important rights which existed under Federal law prior to a series of Supreme Court cases in the late 1980's. Restoring these safeguards against discrimination, in my judgment, is extremely important.

The goal of this legislation is to enhance the employment opportunities of minorities and women by permitting victims of discrimination to challenge unfair employment practices. Under this legislation, employers may not implement employment practices that are not job related or consistent with business necessity. In addition, victims of intentional discrimination will be provided with suitable remedies, particularly the collection of damage awards.

I believe that this bill will move us in the direction of a society where all people are treated with equal concern and respect. Individuals eager to find personal satisfaction through their achievements in employment should not be prevented from pursuing their goals simply because of the color of their skin, their sex, their religion, or their disability status.

The civil rights bill is important legislation and therefore I support it. However, I do not believe this legislation by itself will resolve the major issues affecting minorities or women. What minorities and women need in addition to technical legislation regarding litigation processes is for our Nation to address seriously the conditions which are at the root of so many of our social problems. These concerns include the need for adequate health care, decent housing, good education, effective job programs, and responsible city infrastructures. Our Nation must confront an array of social obstacles facing minorities and women in addition to protecting their rights to litigate.

Nonetheless, this legislation takes an important step in embracing and advancing the fundamental rights upon which our Nation was established by promoting equal access in employment. Sadly, civil rights has recently been mischaracterized as an extension of special protections for selective groups. The need to enact this bill demonstrates the hurdles we have yet to jump through to secure equality for all Americans.

The civil rights bill will encourage employers to examine their present policies and make required changes, and it will enable minority groups and women to seek redress when discrimination occurs.

I extend my commitment to this legislation and other measures which guarantee to all Americans equal protection under law.•

Mr. WALLOP. Mr. President, for nearly 2 years now, we have been trying to reach an agreement on civil rights legislation. Now that a compromise has been fashioned, our divisiveness has reached a new level and we are in a quandary as to who are the winners and who are the losers. I am not one for rash predictions, Mr. President, but I hazard a guess that the losers in this battle will be our Nation's small businesses.

I commend the Senator from Missouri [Mr. DANFORTH] for his efforts to modify the damages allowed under this bill. I remain concerned, however, that this bill does not provide adequate protections for those companies which

might be subjected to economically devastating lawsuits.

It was originally my intent to offer an amendment to allow a judge to reduce damages awarded by a jury if the amount of the award would be a de facto bankrupting of the company. But I was discouraged from offering my amendment by those who worked hard to forge this fragile compromise. Yet their reasons for deterring me from offering my amendment are even more frail than the final proposal.

My amendment was criticized for favoring economics over justice and civil rights. That is simply not the case. I believe no employer, no matter how small, should be allowed to discriminate.

Yet just as we did with family leave legislation, the unemployment compensation package and a host of other bills, we have failed to measure both their economically useful and economically destructive aspects and modify them where practical.

My amendment was about job creation, economic growth, and competitiveness, the very issues about which several Members of this body have been pontificating. It is unfortunate that their swagger was not as convincing as the decibel level of their disputations.

The Danforth proposal would permit plaintiffs to recover unlimited damages for out-of-pocket costs as well as pecuniary damages, damages for pain and suffering and punitive damages, up to certain limits. This remedy would be in addition to the existing remedies of back pay. Moreover, S. 1745 places no cap on monetary damages for past harm, except in bias cases based on statistical comparisons. When faced with possible jury awards, attorneys' fees, discovery costs, not to mention court costs, bankruptcy is just around the corner for the average small business owner with an average taxable income of $25,000 a year.

The caps on damages contained in this bill therefore offer no real solution. Small businesses will simply not be able to survive the legal fees, much less the damages from the flood of litigation this measure invites. This bill paves just one more avenue to legal antics where no one benefits but the attorneys.

So I say to my colleagues that, by its very nature, this bill continues to foster an already antientrepreneurial environment in this country. The adverse impact will most strongly be felt by the small businesses, particularly those in my home State of Wyoming which happens to have the largest per capita percentage of small employers in the country.

It is not the large corporations such as AT&T and General Motors which will have to deal with the resentments and frustrations of stagnant incomes which may arise as a result of this legislation. It is the entrepreneurs and the job creators—those in the low- and middle-income brackets.

Yes, lawsuits can and should be used to deter wrongdoing. But where the civil rights of individuals are paramount, so, too, is the right to economic prosperity.

The United States stands alone as the most litigious society in the world. And who pays? We all do. We pay in higher insurance rates, and higher grocery prices. The list goes on. And the cost to business is staggering, putting them at a severe competitive disadvantage.

U.S. companies spend more than $20 billion a year on litigation, not including the cost of settlements and judgments. Civil cases cost on the average of $80,000 for small businesses, often forcing them to cover these costs by cutting into budgets otherwise earmarked for sales or product development.

The unavoidable result is a significant drop in business earnings, followed by a precipitous decline in employment and few entrepreneurs capable of applying the kind of cost-benefit analysis that lends discipline to various aspects of their business.

Over the last few years, we have been consumed by the prospects of making inroads in the global marketplace. But this legislation is the anthithesis of any competitive spirit we take pride in as Americans. It does not promote equal opportunity and job creation. It promotes authority over economic and competitive interests.

In the "Economic Analysis of Law," Judge Richard Posner, tells us that "one of the most tenacious fallacies about the economics of law is that it is about money. On the contrary, it is about resource use, money being merely a claim on resources." But it is mobile resources that gravitate to the most valuable and cost-effective uses.

And if voluntary exchanges are permitted through competitive market forces, we can reasonably predict an increase in efficiency and employment opportunities. Yet this bill erects another barrier to the most efficient paths for achieving those goals.

Mr. President, I agree there is more to justice than economics, but there is also much to be said for what a society must sacrifice for the ideals of justice. As Judge Posner has pointed out, "justice is not independent of its price." And that price is much too high for the small businesses of this country.

There is one last point which needs to be made about today's decision. There is a myth afoot that our civil rights are endangered absent the passage of this legislation. The reality is that individual rights have not diminished since the court decisions which we would now overturn. Our Nation remains the bastion of civil rights in a world that acknowledges such rights all too begrudgingly. Our rights continue, with or without this legislation. In fact, this bill leads us down the path of diminishing our rights. It moves us away from our common law heritage to a system more akin to the continental, roman law. One result is to prejudge the accused as guilty and force them to prove their innocence in court. This is a dangerous reversal of our rights. I would recommend my colleagues read an article by Gordon Crovitz from today's Wall Street Journal which discusses the dangers of substituting political necessity for legal principles. I ask that this article be printed at this point in the RECORD

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, Oct. 30, 1991]

BUSH'S QUOTA BILL: (DUBIOUS) POLITICS TRUMPS LEGAL PRINCIPLE

(By L. Gordon Crovitz)

Liberals always thought the key to racial and sexual equality is lawyers litigating for punitive damages, but President Bush at least used to complain about a "lawyers' bonanza." Maybe Mr. Bush thinks that enriching lawyers with a quota bill will reverse the recession for one industry, even if it's at the legal-fees-by-the-hour expense of all other businesses.

Not quite all other businesses. Senators understand the terrifying implications of the law they wrote well enough to deny their employees the right to sue them. Mr. Bush, despite his brave words about making congressmen abide by the law, gave them a pass here.

Senators yesterday devised ways to avoid the jury trials they plan for others. The George Mitchell-Charles Grassley compromise would let Senate workers appeal from internal procedures to a federal appeals court, but unlike private-sector workers they couldn't get jury trials or punitive damages.

Senators tried to justify their exemptions by invoking separation of powers, but the Constitution lists all the immunities: Congressmen can't be arrested while at or going to or from Capitol Hill (except arrests for treason, felony and breach of the peace), and they can't be sued for what they say on the floor of the Senate or House. There is no immunity for discrimination or sexual harassment. The first private-sector employer sued under this bill should bring an equal-protection clause defense arguing that it's been singled out as a defendant for not being Congress.

One reason Congress is so edgy about being sued is that this bill has little to do with what most Americans consider discrimination—international discrimination. The entire debate instead is about the lawyers' invention of disparate-impact analysis, which starts with the assumption that there is "discrimination" unless every job filled by every employer perfectly reflects—no less and no more—the available labor pool of women, blacks, Greek-Americans, Jews, Aleuts.

The Supreme Court tried in cases such as *Wards Cove v. Atonio* to avoid this hyperlitigious world by crafting clear defenses for employers. The justices ruled that plaintiffs must identify seemingly objective job requirements such as tests or educational requirements that excluded them. Plaintiffs would then have to prove that

these factors have no significant relation to any "business necessity" of the employer. The civil-rights bill blessed by Mr. Bush reverses the burden of proof, adding insult to lawsuit by refusing to define business necessity.

This non-definition definition hints at the mischief of this bill, which ensures years of costly lawsuits as judges try to fathom what Congress meant by a bill that intentionally doesn't say what it means. The following section, entitled "Exclusive Legislative History" (even though Ted Kennedy immediately went to the floor of the Senate to give his own interpretation), is supposed to guide judges as they in effect write the law:

"The terms 'business necessity' and 'job related' are intended to reflect the concepts enunciated by the Supreme Court in *Griggs v. Duke Power Co.* and in other Supreme Court decisions prior to *Wards Cove v. Atonio*." Under this non-standard the justices could simply re-adopt the constitutional protections they gave defendants. After all, they thought much of *Wards Cove* was simply a continuation of their *Griggs* analysis of disparate-impact cases. It was in a case decided before *Wards Cove* that the court insisted that "the ultimate of proof" must remain "with the plaintiff at all times."

No law can amend the Constitution to deprive parties of the due process so the provision depriving third parties of the right to challenge consent decrees likely remains unconstitutional. The bill also gives the justices a new reason to declare punitive damages unconstitutional. Damages for sexual harrassment would increase with the irrelevancy of the size of the workforce, not with the heinousness of the offense. Harassment remains undefined.

Why did Mr. Bush cave? He must know that labor lawyers today are advising clients to avoid litigation by hiring by the numbers. The likeliest explanation is politics. There's probably no better motive for inserting politics into law than for a Republican president to twist the law in ways he thinks will appeal to blacks, but does Mr. Bush think it's good politics to sacrifice legal principle for supposed racial ends? Judging by recent flipflops by the White House, the answer is yes. The quota bill is the latest tea leaf that for this administration, racial politics trumps law:

Mr. Bush this month instructed Solicitor General Kenneth Starr to withdraw a key argument in a brief he'd submitted to the Supreme Court. The question in *U.S.* v. *Mabus* is how much spending Mississippi must do to attract applicants to historically black public universities. Mr. Starr said the State needs to do more, but that separate but equal is a dead doctrine. "The idea is to end duplication, not to ensure it by ensuring that separate schools are in fact equal," he wrote.

Mr. Starr, who helped craft Dan Quayle's civil-justice reform proposals, warned about the litigation nightmare if the justices insist on precisely equal spending. He said this would invite "enormous and endlessly litigious undertaking to ensure that there are no longer any spending disparities."

This brief was filed in July, but in September a group of black college administrators lobbied Mr. Bush to disavow this legal argument. He sent the word to Mr. Starr, who on Oct. 10 filed a rare, perhaps unprecedented, withdrawal with the Supreme Court. "The time has now come to eliminate those disparities" in spending, Mr. Starr wrote. "Suggestions to the contrary in our opening brief," a footnote explained, "no longer reflect the position of the U.S." Team-player Starr, who often speaks of the importance of the unitary executive branch, quietly went along with this order from the boss.

Months before Lamar Alexander took over at the Education Department, the agency's top civil-rights official, Michael Williams, declared race-specific scholarships unconstitutional. One of Secretary Alexander's first acts was to put on deep freeze this legal opinion by a politically incorrect black lawyer.

Mr. Williams' legal analysis was a routine application of the 1978 Bakke decision and other cases prohibiting race-linked policies except to remedy specific past discrimination. Yet Mr. Alexander announced that race-based scholarships could continue while Mr. Williams' opinion was under review. No word on when, or if, a final decision will be reached.

Liberals in Congress bear the chief responsibility for the litigation madhouse this bill creates, but David Duke is likelier to make Mr. Bush bear the political costs. Clarence Thomas proved that all blacks do not bow before the interest groups that insisted on this bill. It's doubtful that anyone thinks better of Mr. Bush for breaking his no-new-quota pledge.

It won't take long for resourceful lawyers to pump this lawsuit cow for all the cash it's worth. Expect years of divisive cases pushing this bill's peculiar definition of discrimination. After all this, at least no one will be able to argue that litigation leads to harmony.

Mr. KERRY. Mr. President, the struggle to enact this civil rights bill has been, as the columnist Ellen Goodman recently wrote, a classic example of why Americans hate politics. For 2 years, we have argued about this bill, exchanged partisan charges about it, wrestled with the language, and debated every paragraph. Despite this, most Americans outside the Beltway do not understand what the bill is really all about. It is not that the issues dealt with are unimportant; they are very important. But they are not the issues that most American families deal with on a daily basis. Back in my State, most people can't afford to worry about suing their bosses—they just want to keep their jobs.

There is cause for celebration, nevertheless, in the fact that we finally have a bill that Congress will pass and that the President will sign. The bill will help clarify, as a matter of law, where we draw the line between illegal race or sex discrimination and the legitimate judgment of an employer that one candidate happens to be more qualified for a particular job than another candidate.

As a result, employers will clearly be prohibited from creating irrelevant job qualifications that effectively screen out women or minorities. In other words, employers will not be able to require that a janitor have a high school diploma if that is not needed to do the work and the requirement makes it less likely that a woman or a minority will be hired. It is this provision that, until last Thursday, President Bush said would lead to quotas. Now, he acknowledges what has been true all along, which is that it will not lead to quotas. After 2 years of divisive rhetoric, the President has finally admitted that Senator KENNEDY and Senator DANFORTH were right and that he was wrong, and for that we should be very grateful.

Obviously, this is not a perfect bill; it is a compromise bill. It will not make the law fully clear or fully just or fully fair. It will narrow, but not remove, the distinction in remedies available to those who suffer from discrimination on the basis of gender or religion as opposed to race. The fight to establish complete equity in the law must, unfortunately, wait until next year.

But although the bill is not perfect, there is no question that it will provide women and minorities with a far greater degree of protection than would continued stalemate under current law. I salute those who worked so hard to forge this compromise; I believe it is an important step forward for our country and that it will be viewed as one of the significant achievements of this Congress.

I wish to offer my sincere commendation and appreciation to the distinguished senior Senator from my State, Senator KENNEDY, the senior Senator from Missouri, Senator DANFORTH, and other Senators who labored long and diligently with the objective of crafting a worthwhile bill that could become law despite the inflexible stance taken by President Bush. The enactment of this bill will serve as a much more fitting tribute to their perseverance and commitment than my words, but I must express my compliments nonetheless.

Mr. MURKOWSKI. Mr. President, I rise today in support of the compromise reached on S. 1745, the Civil Rights Act of 1991. I commend the President and Senator DANFORTH on their efforts to reach a compromise that we call can support. I personally met with the President on more than one occasion to discuss this legislation and I know how committed he is to enacting meaningful civil rights legislation.

Mr. President, everyone in this body agrees with the goals of S. 1745. We all agree that discrimination, in any form, is unacceptable. As a free society, we can never rest until every individual is given an equal opportunity—that is what the American dream is all about. The compromise that has been reached represents a consensus on the best way to achieve this goal. I was pleased to join in this effort by adding my name to the compromise's list of cosponsors.

Most importantly, the compromise is no quota bill. Quotas do great harm to the cause of civil rights. They are demeaning to minorities and a source of animosity for everyone. In addition, questions about the retroactive application of this legislation have been ad-

dressed. Retroactivity is fundamentally unfair. Parties that begin litigation under one set of rules should not have the rules changed on them in the middle of the game.

Wards Cove Packing, a large employer in my State, has spent over 20 years and $2 million in legal fees proving itself innocent of employment discrimination. In eight separate decisions, no court has ever found this company guilty of discriminatory hiring practices.

The now famous Wards Cove litigation began in 1971, almost a generation ago. When the district court and the appeals court first considered this case, they decided it under the prevailing Griggs versus Duke Power Company standard. Both courts found Wards Cove innocent. Both courts even assigned Wards Cove the complete burden of proof and still found Wards Cove innocent. The case went to the Supreme Court which remanded it. In January of this year, the district court issued its remand decision. The district court found no reason to change its prior conclusions about Wards Cove's innocence stating: "The court * * * finds that the defendants hired individuals * * * based on their qualifications, and not upon their race."

After 20 years and eight losing decisions, the plaintiffs' attorney has filed yet another appeal, now seeking his ninth decision. The plaintiffs have had their day in court. This case is over. The only argument left to the plaintiffs is that Congress is changing the law and that this case, which has already been decided under Griggs, should be retired.

After 20 years of litigation, Wards Cove would like to decline the honor of relitigating this case. Regardless of whether we in Congress think the law is being changed, the plaintiffs' attorney is determined to force Wards Cove to litigate that issue. And if the plaintiffs' attorney can convince the court we are changing this law, Wards Cove will be forced into still more litigation in which its 1971 employment practices will be judged by standards first created in 1991. And if the court finds Wards Cove guilty under the standards the court says we are now establishing, Wards Cove will be in the very curious position of being found innocent under the Griggs standard the legislation seeks to restore but guilty under the standards the court says we have actually established.

Mr. President, the Wards Cove case is not still pending because there are outstanding issues on the merits. The case is not pending because the plaintiffs have been denied their day in court. The case is pending only because the plaintiffs' attorney wants to keep it alive. In three separate briefs, the plaintiffs' attorney has argued the case should be kept open and litigated based on the pending civil rights legislation. In fact, this was the plaintiffs' attorney's lead argument before the district court on remand.

The brief filed in support of the plaintiffs' attorney's most recent appeal again argues a decision should be deferred until Congress passes this law at which time the case can be retried. The brief states "Barring special circumstances, courts apply amendments which go into effect while a case is pending."

Mr. President, this case is a special circumstance. But it is not a special circumstance justifying relitigation. It is a special circumstance which justifies the inclusion of language in this bill, which I authored, allowing this case to go to closure regardless of how a court may interpret the effective date provisions of S. 1745.

I have been informed by the sponsors of this legislation that their intent is that the bill not apply retroactively. I strongly support this intent.

The inclusion of language regarding this case should not be interpreted as a precedent for any other case. Nor should it be viewed as creating an implication regarding whether or not this legislation applies retroactively generally. It is to be interpreted as a congressional determination that regardless of how the general retroactivity issue is resolved, the Wards Cove case is one in which it is clear that this legislation should not apply retroactively.

Mr. LAUTENBERG. Mr. President, employees of the U.S. Senate should have the same civil rights as their counterparts in the private sector. And as an employer, the Senate and Senator should abide by the same standards of nondiscrimination that apply to employers in the private sector.

Yet, Mr. President, we need to take account of things about the Senate which are unique and different from the private sector as we apply these standards. The Senate is part of a separate branch of Government. It is a political body, often in conflict with the other branches of Government. Senators in some ways have less flexibility than private sector employers to respond to discrimination complaints. In examining proposals to extend the civil rights laws to the Senate I was guided by my desire to hold the Senate to the same standard of behavior that we apply to the private sector, while recognizing the uniqueness of this institution. For that reason, I opposed amendments that would open the door to political abuse. I opposed amendments that would violate the constitutional concept of the separation of powers. And I opposed amendments that did not take account of the inability of Senators to protect themselves against personal liability by incorporating under our Nation's laws like private businesses.

The Grassley-Mitchell amendment to S. 1745, the Civil Rights Act of 1991, developed in a bipartisan manner, was designed to ensure equal application of the civil rights laws to the Senate. This amendment provides victims of discrimination access to our judicial system, by allowing them to have a U.S. appeals court review or the decision obtained in the Senate. I did not believe that the judicial review contained in this amendment was unconstitutional. Accordingly, I voted against a constitutional point of order against the Grassley-Mitchell amendment raised by Senator RUDMAN.

However, it is important that the constitutional separation of powers be maintained. I believe that unlimited review of the legislative branch by the judicial branch is unconstitutional and will likely breed political abuse. As everyone knows, Federal district judges are political appointees and have to go through a Senate confirmation process. A Senator who voted against the nomination of a district judge may have to face that same judge in a trial someday. The Nickles amendment, No. 1287, which provided for a totally new trial in Federal court, along with the threat of punitive damages, for which Senators could be personally liable, crossed the constitutional line. For that reason, I voted to table this amendment.

On the matter of personal liability for discrimination by Senators, I voted to table the Rudman amendment because Senators do not have the protections that incorporated organizations do against any type of lawsuit. This tabling motion failed and the amendment was adopted. Under our laws, business owners can shield themselves from personal liability by incorporating, but Senators would not be eligible for this type of protection. Therefore, Senators would be personally liable for compensatory damages in relation to a discriminatory action conducted personally by a U.S. Senator. Officers in private companies are not personally liable for similar damages.

Political abuse can also arise when political appointees in the executive branch enforce rules in the legislative branch. I support the application of all labor and safety laws to the Senate in the same way as they are applied to the private sector. I urge the Senate Rules Committee to move forward and establish internal labor and safety regulations. I don't believe, however, that political appointees of executive branch agencies should investigate and enforce work rules within the Senate. I voted to table the Nickles amendment, No. 1284, because there is a great potential for political abuse if Republican political employees were investigating Democratic politicians or vice versa. We should not allow politics to become part of the enforcement of our Nation's labor and safety laws in the U.S. Senate.

So, Mr. President, while the Grassley-Mitchell amendment provided a

slightly different mechanism for resolving discrimination complaints, it established the same standard of behavior for the Senate, and provided employees with the same rights, as apply to the private sector.

Mr. RIEGLE. Mr. President, I rise in support of the Civil Rights Act of 1991. This bill is urgently needed to protect all Americans from discrimination in the workplace.

The Senate should act to reserve civil rights protections that were eroded by a series of Supreme Court decisions that overturned long-standing law. These decisions mark a retreat from the course we have set in our fight for equal opportunity. I believe that Congress has the duty to return the law to its previous standing and tighten it where appropriate.

The Senate has worked for well over a year to develop a proposal that can become law. Last year, Congress agreed to over 25 changes in the bill requested by the President in order to reach a compromise. That compromise passed the Senate three times with widespread support, yet the President vetoed the bill. The Senate failed by just one vote to overturn that veto.

The bill before the Senate today will receive support from Members of both parties, just as last year's bill did. This indicates agreement in Congress and outside, that employment practices that only have the effect of excluding individuals on the basis of race, color, religion, or sex should be eliminated.

Further, the consensus reflects the understanding that individuals should be protected from intentional discrimination and that those who do discriminate in employment should face severe penalties.

The timing of Senate debate on this bill is also appropriate in light of the national debate on sexual harassment in the workplace because the Civil Rights Act toughens penalties for sexual harassment in employment. Unfortunately, these penalties are limited by caps on the amount a victim of intentional sex discrimination can recover. I believe the bill ought to be modified to remove those caps. Tougher sanctions are needed to help eliminate discriminatory actions that make it difficult for women to reach their full potential at work.

Apparently, the President will support this civil rights bill. While there are some differences between the bill before the Senate today and the bill that was passed by the Senate last year, it is substantially the same. The bill overturns the same Supreme Court decisions that would have been overturned in the bill passed last year. The President was wrong to call the bill passed by the Senate last year a quota bill—it was not a quota bill. It is a disgrace that the President vetoed the civil rights act last year and that it took so long for the President to support legislation that will protect civil rights in the workplace.

We must do more to root out discrimination in our society. While we have made a great deal of progress over the past three decades, much work must be done to ensure that each and every citizen has equal opportunity. As chairman of the Banking, Housing, and Urban Affairs Committee, I have had the opportunity to hold hearings on the plight of the black male in America. These hearings vividly illustrate the fact that significant barriers remain to many within our country. Dramatic testimony reconfirmed that minorities often face deep-rooted discrimination and prejudice in our society. The hearings also showed that when those barriers are removed, and people are given a chance, they succeed.

Women have also enjoyed tremendous success and have taken advantage of greater opportunity in the work force. In 1950, 34 percent of women worked, last year, 58 percent of women in America worked. With the increase in women in the work force, we have unleashed a great deal of talent. I strongly believe that we would benefit from even greater participation by women in politics, in business, in manufacturing, or in any other field in which women want to work.

Unfortunately, like the progress we have made in opening opportunity for racial and religious minorities, the progress our society has made with regard to women has also been limited. In many cases there is a glass ceiling that prevents women from rising beyond a certain level. The hearings recently held by the Judiciary Committee, and Professor Hill's testimony, brought foorward a deep concern about difficulties that many women face in the workplace.

Discrimination that keeps talented citizens out of jobs wastes a great deal of our economic strength. We cannot afford to continue to allow prejudice to divide our Nation; we must work as a team in order to compete in the global economy. We have never faced tougher competition from abroad. Tens of thousands of high-paying jobs have moved overseas over the last 10 years. We need to keep these jobs here at home and create new jobs if we are going to have a society in which our children have greater opportunity than we have.

This bill will help us become more competitive because when we fight for equal opportunity, we free talent and ability that had previously been underused. The Senate should pass this legislation, and it must also begin to develop a plan that continues to expand opportunity for all of our people.

This means that we must guarantee that each and every citizen has the opportunity to obtain a top-notch education. We must pass legislation to ensure that all Americans have access to high-quality and affordable health care. And we must develop a sound economic plan that creates new jobs and new opportunities for every citizen.

I am also pleased that this legislation includes a compromise that provides civil rights protections to Senate employees, while protecting the separation of powers as laid out in our Constitution.

Mr. President, America is known as the land of opportunity. Every person deserves the right to have that opportunity on an equal basis. We must provide added protection to workers. When the Senate votes on the civil rights bill, I will vote in favor of it.

Mr. HATCH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DIXON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. KENNEDY). Without objection, it is so ordered.

Mr. DIXON. Mr. President, as an original cosponsor of the substitute to S. 1745, the Civil Rights Act of 1991, I want to acknowledge the perserverance of Senators DANFORTH, KENNEDY, and many others who developed the compromise that we have before us today.

This subtitle ends a 2-year dispute with the President over civil rights. I am pleased that this amendment maintains the core of the original proposal—that it still effectively overturns a series of ill-conceived Supreme Court decisions that impaired enforcement of what, until now, had been considered well-settled workplace antidiscrimination law.

Among other major provisions, the bill:

First, returns to the employer the burden of proving business necessity in disparate impact cases; and

Second, for the first time, establishes compensatory and punitive damages in cases of intentional discrimination against the disabled and women.

Mr. President, I have heard from a number of Illinoisans who have expressed concern about the caps on damages in the bill. I understand these concerns, and it is true that having damage limitations in cases of intentional discrimination against the disabled and women, but not against minorities, is in itself discriminatory.

I have stood against discrimination in all its forms throughout my career, and I am opposed to a dual system of remedies in cases involving intentional discrimination. In fact, during the 101st Congress, I cosponsored S. 2104, the Civil Rights Act of 1990, when it had no caps on punitive damages for women.

However, the political reality today is such that if we really want a civil

rights bill, the only way to get it is to accept the damage limitations. That is the only way to get this bill signed by the President.

The distinguished majority leader has given this body assurance that the limitation on damages issue will be addressed in legislation next year. I welcome the opportunity to debate the issue.

Mr. President, I generally support adding discrimination protection for congressional and executive branch employees in the workplace. The President has publicly stated his support for congressional coverage, and I believe that he would also want coverage for his employees. I understand that an amendment on this issue has been adopted.

I call on my colleagues to join me and vote for S. 1745.

I thank the Chair. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DANFORTH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. DIXON). Without objection, it is so ordered.

Mr. DANFORTH. Mr. President, yesterday I expressed my appreciation to a number of staff people who have done outstanding work in bringing this bill about, and I would like to add to that list today the following individuals: Dennis Shea, who has worked with Senator DOLE on this matter, has been tireless. He has pursued the difficult job of reaching a compromise between the advocates of the legislation and the White House, and it was largely because of his efforts that we were able to put together the agreement of last Thursday; Jeff Blattner, Carolyn Osolinik, and Mary Dent, with Senator KENNEDY, were tough but flexible, if necessary, in order to bring the bill about; Mark Disler and Sharon Prost, with Senator HATCH, similarly were very effective representatives of Senator HATCH, very competent; and Anita Jensen, with Senator MITCHELL, also was a major participant.

This, as has been pointed out many times, has been complicated legislation, has involved many months, years even, of effort involving a lot of people. It is fitting to express the appreciation of those Senators who have been involved for the excellent staff work that has been done.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The distinguished Senator from Missouri suggests the absence of a quorum.

The distinguished Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, we are waiting for the last two technical amendments for clearance. As I understand, we still have 30 minutes for general remarks. I think I will save the Senate's time by making what very brief concluding remarks I have at this time.

Mr. President, this bill is a resounding victory for civil rights. The action we will make is all the more satisfying because it involves a welcome restoration of the bipartisan coalition in Congress and between Congress and the administration that has been responsible for so much of the historic progress we have made in the past half century.

Civil rights has always been the unfinished business of America, and it will continue to be our unfinished business for many years to come. For much of our history, the noble promises of the American Revolution, the Declaration of Independence, and the Constitution were not available to all of our citizens.

A century ago, we fought a Civil War to resolve our differences over slavery. In our own time, when the legislative and executive branches of Government were too slow in their responses to injustice, the modern civil rights movement was born. And for a time, the Supreme Court became the conscience of the country.

But Congress and the administration took up the challenge in the 1960's. The Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Fair Housing Act of 1968 are among the most important measures that any Congress at any time in our history has ever passed.

They laid the groundwork for what has been called the second American Revolution, the revolution of civil rights.

The two most important characteristics of that revolution are that it is a peaceful revolution, and it is a continuing revolution.

The measure we will soon pass is in the best of that tradition. I commend all those who have brought us safely to this day, especially our colleague from Missouri, Senator DANFORTH. He has been a profile in courage throughout the many months of this difficult and painful and profoundly important debate.

Because of his leadership, and because of the tireless efforts of many others, we have succeeded in taking the next great step on civil rights.

We were tested, and we were not found wanting. We hesitated, but we did not turn back. The action we are taking is the latest milestone in America's unique and continuing journey to justice.

I also want to pay tribute to Members of my staff whose long hours and hard work have made so much difference to our efforts.

Jeff Blattner's outstanding work is well known to many of us on the Judiciary Committee. Throughout the past 2 years leading to this successful vote, beginning with the day the Ward's Cove case was decided in 1989, he mastered all of the complex details of these issues and the many intricate versions of this legislation. In doing so, he never lost sight of the fundamental goals we are trying to achieve, and the Nation is in his debt.

Carolyn Osolinik was equally impressive in her ability to reach out to those on both sides of the aisle and to deal effectively with widely divergent groups around the country. Through her skillful work, we were able to narrow our differences, and extract the maximum consensus on these intricate issues that mean so much to millions of our fellow citizens.

In addition, Mary Dent and Mike Frazier deserve great credit for their excellent work and their skill in helping us to reach this compromise.

I commend all of them for their invaluable assistance. Their work was indispensable, and far above and beyond the call of duty. They have served the Senate well, and they have advanced the cause of civil rights.

I would also like to thank Laverne Walker, Annie Rossetti, and Amy Reginelli for their efforts.

I also want to extend my appreciation to Senator DANFORTH'S staff. I know he has mentioned them, but I too want to express my appreciation to Jonathan Chambers and Peter Leibold. They have been enormously talented and creative in trying to find common ground in these areas.

On Senator METZENBAUM'S staff I'd like to note the efforts of Jim Brudney and Greg Watchman. Senator METZENBAUM was very involved in fashioning this legislation and in initiating his own proposals, in the early days following the Supreme Court's decisions. He has worked very closely with all of those on our Human Resources Committee involved with this legislation.

For Senator JEFFORDS, who is also on the Labor and Human Resources Committee and was the prime sponsor in the early days of our consideration of this issue. Mark Powden and Reg Jones, both members of Senator JEFFORDS staff, were enormously helpful;

I would also like to express our appreciation to the minority leader and Dennis Shea;

To Senator MITCHELL, and Anita Jensen, who worked very closely with all of us;

To Senator HATCH, and Mark Kisler and Sharon Prost; and to Senator CHAFEE, and Amy Dunathan.

Again, I extend my appreciation to the leader, Senator MITCHELL, whose constant assistance has helped bring this issue to the Senate last year, during the veto override effort and during the effort to ensure that the conference report would reflect the considered judgment of this institution, he kept after this issue and kept it on the agenda.

We tested his patience with 2 or 3 days of continuing quorum calls when we were attempting to find a common ground. It is never easy when he has as many responsibilities as he has in wide areas of public policy. He was extremely patient with all of those who were involved. At the critical moments when we needed the strong, firm, guiding hand of a leader, he worked his will. This legislation certainly would not have been where it is today if it had not been for his very strong support.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. AKAKA. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. AKAKA. Mr. President, I ask unanimous consent to speak for 10 minutes without charging it to the pending bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. AKAKA. Mr. President, I rise in support of S. 1745, the Civil Rights Act of 1991.

I commend Senator DANFORTH and Senator KENNEDY for their persistent efforts to reach agreement with the administration on the compromise civil rights legislation before us.

I want to express particular gratitude to my friend, the senior Senator from Massachusetts, for his leadership, diligence, and commitment to the cause of civil rights. In a public service career spanning almost 3 decades, Senator KENNEDY has worked continually to assure that every American received the equal opportunity and equal justice guaranteed by the Constitution.

Mr. President, passage of the Civil Rights Act of 1991 is essential to halt the erosion of equal job opportunity and antidiscrimination protection for working men and women caused by recent Supreme Court decisions.

S. 1745 also strengthens the ability of women and minorities to vigorously challenge discrimination and harassment in the workplace, and thereby be assured of equal employment opportunity.

This bill overrules the Supreme Court's decision in Wards Cove Packing Co. versus Atonio, and restores the right to challenge discriminatory workplace practices by reestablishing the precedent set 20 years ago by the Griggs versus Duke Power Co. decision. The bill affirms the right of an employee to challenge an employment practice with a disparate impact under title VII of the Civil Rights Act of 1964. The bill also codifies the procedures for adjudicating disparate impact cases.

In addition, S. 1745 reverses other recent Supreme Court rulings which have diminished an employee's protection and right to redress under title VII. The combined effect of this legislation will be to better protect workers from discriminatory seniority systems, mixed motive discrimination, and discrimination and harassment on the job, as well as in hiring.

Mr. President, along with recovering ground lost in the past few years as a result of adverse court decisions, the Civil Rights Act of 1991 extends civil rights remedies to victims of intentional discrimination based on gender, religious belief, or disability. For the first time, women, religious minorities, and the disabled who suffer intentional discrimination will be able to receive compensatory and punitive damages.

Unfortunately, this new protection falls short of fulfilling the promise of fairness, justice, and equality of opportunity we extend to other Americans under the 1964 Civil Rights Act. I understand the need for cooperation and compromise in the legislative process. However, I regret the inclusion of statutory caps on damages for some victims of intentional discrimination.

Mr. President, I had intended to join Senators WIRTH, DURENBERGER, and MIKULSKI in offering an amendment to eliminate the limitation on damages for sex-based and religious discrimination. The amendment will not be offered to this bill in order to preserve administration support for the bipartisan agreement. Instead, legislation to ensure that all Americans have the necessary legal remedies to protect against discrimination in the workplace must be considered at another time.

Under current law, racial minorities have the right to seek compensatory and punitive damages for employment discrimination without caps on recovery. Women, disabled workers, and certain religious minorities deserve equal treatment when faced with intentional discrimination and harassment. It is a matter of simple equity.

The bill currently provides for a four-tiered system which would cap punitive damages for intentional discrimination suffered by women, people with disabilities, and certain religious minorities. Further, these caps on compensatory and punitive damages are based upon the size of the employer's work force, not the maliciousness or pervasiveness of the discriminatory practice.

What message do we send to the women, disabled, and religious minorities who are victims of intentional discrimination or harassment by establishing arbitrary limits on damages? What signals are we sending to employers and the American people by providing these people second-class protection compared to that extended employees discriminated against on the basis of race or national origin? By differentiating in remedies, we continue to deny fair and equal treatment to the same working men and women this bill seeks to protect from discriminatory practices. The next step forward in the civil rights struggle must be the correction of this inequity.

Mr. President, S. 1745 symbolizes the progress our Nation has made, and the setbacks we have encountered, in safeguarding civil rights and providing equal opportunity since 1964. The bill under consideration enables all Americans to enforce their right to equal job opportunity in a workplace free of harassment and discrimination. Yet, to echo what Senator KENNEDY said earlier in the debate, civil rights remains the unfinished business of America.

Mr. President, S. 1745, despite its limitations, is a significant step forward in protecting civil rights. The bill reverses the retreat from equal opportunity evident since 1988, and establishes bipartisan dialogue for continued progress towards the goal of equality and justice. I urge my colleagues to support the Civil Rights Act of 1991.

I yield the floor.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The distinguished Senator from Minnesota is recognized.

Mr. WELLSTONE. Mr. President, I thank the Senator from Hawaii for his remarks, and I thank Senators KENNEDY and DANFORTH for their leadership on this bill.

Mr. President, from the apartment where Sheila, my wife, and I live, early in the morning—when I get time—I run down toward the Washington Monument, and then beyond that to the Lincoln Memorial, where Dr. Martin Luther King, Jr., in 1963, gave his "I Have A Dream" speech. And I turn around as I am running, and I see before me the Capitol and then the Supreme Court—the Supreme Court, which for years and years and years I believed helped translate Dr. King's dreams into reality.

In 1989 in the Wards Cove decision, the Supreme Court, sadly but truly—sounded a retreat. As a result of that, a bill was introduced last year, the 1990 Civil Rights Act, which only returned to us the law of the land prior to some of the 1989 Supreme Court decisions, which really overturned 25 years of peoples' history in the struggle to end discrimination and end the struggle for racial equality.

Now with this law that will be enacted by the Senate tonight, we take an important step forward, an important step forward for racial minorities, and I believe for others as well. I join with the Senator from Hawaii and many others in saying that we have yet more to do. It does not seem fair that there are caps when it comes to monetary damages for victims of discrimination who are women or people with disabilities. It does not seem fair at all. Whatever side we were on in the nomi-

nation process, we all felt the pain of what happened when allegations were raised about sexual harassment. We all felt the pain of what happened when Anita Hill came here. And then I think it was a disgrace that, not too long thereafter, three women said they would not testify before one of our committees here in the Senate, because they were concerned about what kind of treatment they might get, what might happen to a woman when she steps forward with those kinds of questions and those kinds of allegations.

So we have to do more. But I want to say on the floor of the U.S. Senate tonight that I am in a positive mood; I am not in a negative mood. And I think this act, this piece of legislation that so many have labored so hard on—Senator DANFORTH being right there in the lead—does take us in the right direction. I hope no longer will we have a politics of dividing people by race. I hope no longer will we ever see the Willie Horton-type of ads. And I believe that this act, most important of all, sends a powerful message that here in the United States of America, we will tell those who would discriminate against racial minorities, or women, or those with disabilities, that they will not be able to violate the civil rights of our citizens with impunity.

And we also send the message to those who are the victims of discrimination that they will have a remedy through the law of our land.

One more time, Mr. President, let me emphasize that it is appealing to the best instincts of America to talk about the importance of pluralism, the importance of opportunity, the importance of fairness, the importance of ending discrimination.

Let me say one more time that in our country the spirit of discrimination must be eliminated. We have yet a long ways to go. But we have taken an important step in the right direction.

Certainly there will be Senators, and I will be one of them, who immediately will introduce legislation to take off those caps when it comes to damage suits. And I think that absolutely has to be done, absolutely has to be done. But I am glad that we are going to pass this legislation. I am glad that we passed the Civil Rights Act.

I think it is important for our country. And, yes, I do not think it ends it, but at least puts one battle behind us as we move forward and we fight other fights that have to be made.

There are many people who still do not have jobs. We are in a recession. And there are many children who are hungry. And there are many children who do not receive an adequate education. And there are many people who are struggling in their communities. And there is so much we need to do yet to end discrimination by age, race, and gender. But as Dr. Martin Luther King, Jr., said so well, "Although the arc of the universe is long, it always bends towards justice." I think also those words represent the spirit of Senator Hubert Humphrey, from my State of Minnesota.

I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from Minnesota yields the floor.

The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I suggest that we use some of the time to get some of the statements over before the half-hour begins and maybe we can waive that time at the end. I would like to make a few comments about the bill and about what has really happened, and perhaps get those out of the way at this point. We still have at least, I think, one if not two technical amendments that probably will have to be placed in this bill before we finally have our final vote.

But, Mr. President, I would like to tell my colleagues on both sides of the aisle that this bill is a good bill. It has been a very difficult process for the last 2 years, especially for us on the Labor Committee because there have been wide shifts in viewpoint. There have been great disparities in approach here.

Frankly, the White House, in my opinion, has been right in calling the original bill a quota bill and most of the other bills up to the current bill quota bills. The business necessity test of earlier revisions was so difficult for any employer to meet that it would have caused the cost of litigation in this area to escalate so rapidly that business people would have had no alternative other than to go to quotas, Mr. President. The language of this compromise makes dramatic changes in this language. Prior versions of this language are what has been the principal objection of the White House during the intervening years. This prior language is no longer in this bill.

In the process, Senator DANFORTH and I tried to resolve this last year, as everybody will recall. I worked at it day and night with Bill Coleman, former Secretary of Transportation. We could not come up with the language that was acceptable to the White House, with the full understanding that I would not support the compromise if the White House did not. I had taken that position from the beginning.

But I have to tell you that when Senator DANFORTH got into it, he did a terrific job, particularly in the past week, in bringing the parties together and in trying to accommodate and reach certain language that people could accept. I want to pay him special tribute for the efforts that he has made. I watched him during the Thomas hearings give day and night to his friend Judge Thomas, our friend really. He did do a tremendous job in helping Judge Thomas become confirmed and now a Member of the Supreme Court of the United States of America, with the formal swearing in this next Friday.

But he also has given an inordinate amount of time to this particular issue as well. I want to thank him for it personally because without his excellent leadership, and without his ability to try and bring both sides together, I do not think this would have come to pass. So I want to pay special tribute to him at this time.

But there have been a lot of colleagues on both sides of the aisle who have been working on this for over a 2-year period to get the civil rights bill to the broad consensus that it is in today.

I express my appreciation especially to President Bush. There has never been a doubt in my mind, having met with him on numerous occasions concerning this particular bill, that he wanted a civil rights bill. He wanted to support it, but he did want it to avoid quotas and, of course, he felt strongly that it should not be a litigation bonanza for lawyers. He has some difficulties with certain other provisions as well. The final and recent changes to this bill have been significant enough to lead to his support.

I think without President Bush we would not be here today either. He deserves major, major credit.

Certainly Senator KENNEDY has been willing to accommodate and try to resolve these problems, certainly more this year than at any other time. And I can personally attest to that. Without him it would not have happened. And even as late as late yesterday we had to make some changes that literally were necessary in order to accommodate people around here, and I have to say Senator KENNEDY was reasonable in helping to make those changes.

The language has been extremely crucial and important. Employment law is one of the most difficult areas in all law in our country, and what appears to be the smallest words to those not skilled or not experienced in this area actually happen to be very, very important words to make a difference between making or breaking many of the businesses in our country and, I might add, providing jobs for many employees in our country.

So we have to take these concerns into account so that everybody can benefit at the same time that we try to institute the greatest forms of civil rights that we can.

I think by standing firm on principle President Bush showed courage, and I think that the President took a courageous stand against this bill in its earlier forms. I think he also took a difficult step of vetoing the prior bill that deserved to be vetoed. It took courage on the part of various Members of the Senate to sustain that veto as well, because nobody wants to be against the civil rights bill.

Nobody does in my opinion. I do not see any reason for anybody to want to be against a true civil rights bill. But in any event, he not only vetoed the earlier bill, and was sustained, but he was willing to continue negotiation for a compromise. I think in the process President Bush has protected the American people, and in particular all of the employers in this country, and I might add employees as well, from, for my thinking, the inevitable and widespread adoption of quotas that would have occurred had this bill been passed and the veto overridden in its prior form. I believe that his willingness to take a strong stand on previous very objectionable legislation is what ultimately led to this strong and fair civil rights bill we can all support today.

Yesterday I explained in detail the changes in the disparate impact provisions of the bill and why the President can now accept its provisions. At the same time, we have overturned the Patterson versus McLean case, to cover racial discrimination in terms and conditions of contracts under section 1981. All postcontract matters will now be covered by the racial provisions of section 1981, and that is a good step. President Bush has been willing to overturn Patterson versus McLean from the beginning, and so have all of us. We have also long been willing to overturn the Lorrance case to make it easier to challenge the intentional discrimination seniority systems and to provide for damages under title VII for sexual harassment cases. And these are major civil rights advances in my opinion.

I think it is important to point out that the President basically got his language with regard to the definition of business necessity and other issues involving disparate impact and got rid of what he considered to be the quota aspects of the bill. He got language that is important on particularity, that we think goes a long way to solving some of the problems he has raised in the past. He gave in on damages to a certain degree because that was not nearly as important as those other two matters. He wanted a $150,000 limit. We go to as high as $300,000 lid on damages for cases of intentional discrimination. And I felt that that was a reasonable compromise on his part.

The area where he gave in that I had the most difficulty with is in allowing the transfer of the burden of proof to be shifted to the defendant employer. So, once the disparate impact statistical analysis is made and the particular practice causing that impact identified, a prima facie case is joined and the employer must come forward and meet the burden not only of production, what the employer also had to do, but the burden of persuasion as well. The President has agreed on the burden shift issue, and that, I think, was a concession that can be justified.

Mr. President, I have to say that this has been an arduous and difficult process. Again, I thank the President of the United States and I thank Senator DANFORTH for the leadership that he has provided. I thank Senator KENNEDY, without whom in his usual way, without his ability to negotiate and compromise, this matter would never have been brought to this floor and to the position we are in. I thank Senator DOLE, who in his own inimitable way really brought the parties together and helped to bring the White House on board, and I think did a terrific job as minority leader. I thank Senator MITCHELL, who of course is majority leader, and is very skilled in these areas and many times sat us down to try to see if we could resolve some of these conflicts and problems, and did so with distinction and with ability.

I also want to especially thank and praise Senator GORTON who played a key role in this entire process. He has consistently shown a remarkable grasp of very difficult and technical legal issues and assisted so many others who tried to come to grips with these issues. Senator GORTON was pivotal in helping to lead the fight against earlier objectionable versions of this bill—a fight which has led to this successful compromise we can all support.

I also think that it is very appropriate to praise some other key Senators, including Senators SPECTER, JEFFORDS, KASSEBAUM, DURENBERGER, CHAFEE, COHEN, and RUDMAN. And there are others. And also I thank the excellent staff people that we have on Capitol Hill for the long, hard hours that they have worked throughout these few years, and certainly over these last number of months.

On Senator DANFORTH's staff, Peter Liebold and John Chambers did terrific work for Senator DANFORTH and everybody here and they deserve a lot of credit.

On Senator KENNEDY's staff, there are others, but I want to particularly mention Jeff Blattner, Carolyn Oslenick, and Mary Dent who always work hard in these areas and without whom we would not have come this far.

On Senator DOLE's staff, you cannot say enough good about Dennis Shea, who was a principal catalyst among staff members in helping to bring this about.

There are others, of course. On Senator MITCHELL's staff, Anita Jensen who worked hard on this and did a very good job. And on my own staff, I want to especially thank Mark Dislen, Miller Baker, and Sharon Prost. They are fine lawyers who worked long and hard on this effort.

But again I would like to praise the President. John Sununu has been in this battle from the beginning and when it came time to make some tough decisions at the end he was willing to make them and I have to say he did a very good job.

Dick Thornburgh did a very good job on this bill until the time he left the Attorney General's Office. He was extremely articulate on this and helped all of us to understand it better. I felt he did a very good job.

Boyden Gray has taken a lot of abuse by some people here in the Senate from time to time, but I have to tell you I have great admiration for Boyden Gray.

Nelson Lund, Nick Wise and, of course, Lee Liberman, from the White House and Justice Department and who have worked very hard on this bill and were constructive all through this, and most particularly in helping us in our recent efforts toward a compromise.

There are others I am sure I missed, and I feel badly about that.

Let me just say this. We now have a bill. I think the five principals at least believe that it is an excellent bill, that it is going to make a difference in this country that is going to really help people in a civil rights sense, in a true civil rights sense, and for the first time is going to bring rights to women that they have not had in the past. It is a terrific bill. It has taken a lot of effort, a lot of good thinking, and it has taken a lot of compromise and hard work on the part of everybody concerned.

But there are a number of other principals as well. But in these last few weeks, certainly two leaders in this body have been Senator KENNEDY, and Senator DANFORTH. And I hope I have been able to play a constructive role as well, at least I intended to.

Mr. President, this is an important bill. I hope every Senator will consider voting for this bill. I think that with what we have worked out and the way things have gone, there is reason for every Senator on this floor to vote for this bill. I know not all will, and we have already had a couple who have announced they will not. But I believe this bill deserves this kind of support, and I hope it will have overwhelming support because civil rights bills deserve it.

When we propound these bills in the future, I hope we will propound them in a way that brings people together rather than divides them. I think if we do that, if we put the same type of spirit of compromise and willingness to sit down and work things out together at the outset on these bills, we would not have to have 2 years of hard fighting and infighting to get it to the point where we have it today.

This is the end result of a number of compromises, a number of major changes, a number of rewrites in the bill, a number of substitutes. But this last substitute is a terrific substitute. It is a major improvement from earlier versions. And I encourage all Members of the Senate to vote for it. I think it is the right thing to do. I think you will be proud of having voted for it. And, yes, even though some of our constituents out there still are a little wary of it and do not quite understand,

I think over the long run the thing that makes this country the greatest country in the world is because of moral virtues, the fact that we do not want people to be treated less than equal in this country, we do not want people to lack civil rights.

I agree with Senator KENNEDY. This is a large step, but it is only one of many in a continuing process of trying to bring equality to everybody in our society and equal opportunity to everybody as well.

Mr. President, I have spoken long enough on this and, of course, I have said enough throughout the years on it—some acceptable and some not—to some of my colleagues. But the fact is I believe in this bill. I believe in what we have done. I believe it deserves the support of all us.

And with that, I yield the floor.

Mr. KENNEDY. Mr. President, I want to thank my colleague and friend from Utah for his generous references. As friends on our Human Resources Committee know, we have areas in which we agree on and areas in which we differ on. I am delighted that in the closing hours of this extremely important piece of legislation, we have been able to work together for its successful passage.

I am very grateful for all of his comments and for his help and assistance in bringing us to this time, which I hope will be very soon.

Mr. DANFORTH. Mr. President, I guess what we are trying to do now is to do our closing statements before the close and I get these technical amendments back and adopt them and then move on and pass the bill.

So I will make my closing statement at this point, trusting that eventually the two technical amendments will arrive. It is so characteristic of the bill that we have been waiting around for a couple of hours for amendments that could not conceivably take more than 10 minutes to draft. But that has been the nature of this odyssey that we have been involved in for the past nearly 2 years in trying to deal with the legislation. So it will be done.

The expectation is that we will end up seeing somewhere around 80 or more votes in the Senate for this bill. I do not know how many people will end up voting for it, but there is a lot of speculation that it could be 80, 85 votes for the bill. That is unbelievable. One week ago I never would have guessed that there was any chance that we would get anything like that. We were fighting for 67. And then the logjam broke and we ended up with what we have today, a bill that has been cosponsored by, among others, Senator KENNEDY and Senator HATCH.

Senator HATCH described it as a terrific bill. The President has signed on, and not just with grudging agreement with the bill but really enthusiastic support for it. The President last Friday was very enthusiastic about the bill.

Some Senators have expressed reservations about this point or that in it. For something this complicated, that is not unusual. What is unusual is that something that has been this hard fought will receive this kind and has received this kind of enthusiastic support.

Everybody is claiming victory—Democrats, Republicans, liberals, conservatives—in passing this bill. I think that everybody is right to claim victory because this is a victory, it is a victory for our country.

So often in the last year and a half we have been focusing on issues that are so narrow that in order to describe them it took so much time that the audience went to sleep. We got involved in endless debates on the narrowest of points, important points, but very narrow points. A single word could become the answer to passing the bill or not passing the bill. And we got involved for hours on end debating words, debating word formulations, trying to find the right combination of words in the Griggs case, arguing about "significant" and "substantial" and "manifest" and other words. What is the meaning of "accumulation"? That was something that we were hung up on as recently as yesterday. That has been the nature of the debate.

But there is a bigger principle that is involved that is much more important than any of the narrow points that so focused our attention, and the bigger principle has to do with forming and reforming a national consensus on the issue of equal treatment for American people. And that, really, is the basic principle that is involved here.

There is no doubt in my mind that there is a consensus among the American people on issues of equality. On the basic question of civil rights, Americans overwhelmingly want other Americans to be treated fairly, not to be discriminated against and not to be discriminated for on the basis of race or religion or gender or national origin. But these questions, particularly the question of race, are so close to the surface of the American psyche that it is very easy, at least temporarily, to cause to ignite bursts of passion, and to do it politically, and we have seen that.

I had a desk a few years ago in the Senate; when I first took this desk I opened up the lid and we have the names of Senators who have previously used the desk, and I saw "Bilbo, Mississippi." There are people like that even today, politicians who get support at least for a temporary period of time by playing the race issue. And there are incidents. I read about it in the newspaper very often, episodes of Ku Klux Klan marches in my State, or the painting of swastikas at the Jewish community center in St. Louis County.

It still goes on. Not to the extent that it did when I was a boy. I did not grow up in the Deep South, but I grew up in the St. Louis area in a very segregated society, segregated as a matter of law. We had a dual school system and blacks could not go to white movie theaters and the baseball stadium was segregated. Baseball teams were segregated in those days. That was what I knew when I was a boy and when I was a teenager growing up in St. Louis.

How times have changed and how the American people have embraced that change. Not only legal changes have occurred, but changes in attitude have occurred. But there are always the little reversions to the past. There are always the nasty little episodes that crop up. And, it seems to me, that the mission of all of us has to be to keep moving forward, to keep progress moving ahead, as a matter of law and as a matter of public attitude.

That is why it is important to speak out when we see an episode of bigotry or racism. And that is why it is important, when there is a reversion, not to let the clock be turned back for long but to turn it forward again.

So what was wrong in 1989 was not simply that the Supreme Court wrongly decided a half a dozen cases, some of them dealing with technical issues such as how to define business necessity. What was wrong was that in the year 1989 the Supreme Court chose to turn the clock back, and that can never happen in civil rights; it can never be allowed to happen.

So it seems to me that our job is twofold. One, to make sure that what Senator KENNEDY has said is true, namely that the business of civil rights must always be unfinished business; and, second, to make sure that those of us who have any kind of public platform must be voices that appeal to the best in the American people and not to the worst instincts that are occasionally played to for political purposes.

So the great victory in this legislation is not so much a legalistic victory, changing the law. The great victory is that by an overwhelming majority we are going to pass this in the U.S. Senate and it will be agreed to in the House and the President will sign it. The great victory is reconstituting a consensus politically, in this country, that had been threatened. That is the great victory in this legislation.

This is momentous legislation. It is not momentous because of the details. It is momentous because it plays a part in what must be the continuing drama of life in our country.

I want to close, Mr. President, by just a short personal word. The last 2 months of my life in the Senate, beginning right after the Labor Day recess, have certainly been the most interesting 2 months of my 15 years in the Senate. And they have been the most challenging 2 months. And they have been

exciting, and they have been trying. And some days really trying.

Throughout this time I know that I have not always been the most pleasant or jovial of Senators, and I recognize that. This, apparently, is the season for recognizing yourself, so I do recognize that. And I do want to express my appreciation for the tolerance and the kindness and the generosity of people who work with me in my office—my staff people—and particularly of my colleagues in the Senate during these last 2 months. I have been something of a pest, but my period of pestiness will not last forever.

I yield the floor.

The PRESIDING OFFICER (Mr. BINGAMAN). The Senator from Utah.

Mr. HATCH. I am glad to hear from Senator DANFORTH that that period of pestiness will not last forever. Since we are all baring our souls, I know I have gotten on a lot of nerves for the last month or so, and I have not wanted to or meant to.

But I really respect the people in the Senate who worked so hard on this bill. It really is a monumental bill. It is the type of bill we can all be proud of and I think will do a lot of good. We are right at the end of the process. We are just checking on the last few amendments and if we can get those approved on both sides—and we think we are almost there—we will wind this up and have a vote. So we tell our colleagues we hope within the next 5 or 10 minutes we can proceed to a vote.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Mr. President, we have gotten down to the last two technical amendments, and there was a third, but we could not get approval on that.

AMENDMENT NO. 1296 TO AMENDMENT NO. 1274

(Purpose: To provide for an expedited review by the Supreme Court of any decision concerning the constitutionality of certain provisions)

Mr. HATCH. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH] for himself and Mr. DOLE, proposes an amendment numbered 1296.

Mr. HATCH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the title entitled "Government Employee Rights", add the following new section:

SEC. . INTERVENTION AND EXPEDITED REVIEW OF CERTAIN APPEALS.

(a) INTERVENTION.—Because of the constitutional issues that may be raised by section 209 and section 220, any member of the Senate may intervene as a matter of right in any proceeding under section 209 for the sole purpose of determining the constitutionality of such section.

(b) THRESHOLD MATTER.—In any proceeding under section 209 or section 220, the United States Court of Appeals for the Federal Circuit shall determine any issue presented concerning the constitutionality of such section as a threshold matter.

(c) APPEAL.—

(1) IN GENERAL.—An appeal may be taken directly to the Supreme Court of the United States from any interlocutory or final judgment, decree, or order issued by the United States Court of Appeals for the Federal Circuit ruling upon the constitutionality of section 209 or 220.

(2) JURISDICTION.—The Supreme Court shall, if it has not previously ruled on the question, accept jurisdiction over the appeal referred to in paragraph (1), advance the appeal on the docket and expedite the appeal to the greatest extent possible.

Mr. DOLE. Mr. President, this amendment has two purposes.

First, it requires the court of appeals for the Federal circuit to examine the constitutionality of the judicial review provisions contained in the congressional coverage section of the Danforth-Kennedy substitute.

Second, the amendment directs the Supreme Court to review—on an expedited basis—the court of appeals decision on constitutionality.

Last night, the Senate considered a constitutional point of order that claimed that the judicial review provisions in the congressional coverage section violate the constitutional principle commonly known as separation of powers.

Although the Senate overwhelmingly rejected the point of order, there are still some lingering doubts as to the constitutionality of these provisions.

These doubts should be resolved by the best arbiter of constitutional issues, the Supreme Court itself, and as quickly as possible.

Mr. President, there is precedent for fast-track review of constitutional issues by the Supreme Court.

In 1989, Congress passed the Flag Protection Act, which contained an identical provision directing the Supreme Court to review the constitutionality of that statute on an expedited basis.

The Supreme Court—in the United States versus Eichman decision—followed Congress' fast-track directive, but ultimately struck down the Flag Protection Act as violating the first amendment.

Mr. President, I fully support the congressional coverage provisions of the Grassley-Mitchell amendment. But if Congress is to live under these provisions, we need to determine—as quickly as possible—whether they are, in fact, constitutional.

Mr. HATCH. This amendment is a technical amendment that helps to resolve issues with regard to intervention and expedited review of certain appeals. I believe that it is acceptable to both sides of the aisle and to all Members of the Senate, or at least as far as I know.

The PRESIDING OFFICER. Is there further debate?

Mr. KENNEDY. Mr. President, we have no objection.

Mr. HATCH. I urge adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1296) was agreed to.

Mr. KENNEDY. I move to reconsider the vote.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1297

Mr. HATCH. Mr. President, I send an amendment to the desk on behalf of the majority leader, Senator MITCHELL, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH], for Mr. MITCHELL, proposes an amendment numbered 1297.

Mr. HATCH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Insert in section 209(a) after the phrase "section 208(d)", the following: ", or any Member of the Senate who would be required to reimburse the appropriate Federal account pursuant to the section entitled "Payments by the President or a Member of the Senate" and a final decision entered pursuant to section 208(d)(2)(B),".

Mr. HATCH. Mr. President, this technical amendment has also been approved by the appropriate parties, and I believe it is acceptable to both sides of the floor.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. KENNEDY. Mr. President, we have no objection to the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1297) was agreed to.

Mr. HATCH. I move to reconsider the vote.

Mr. KENNEDY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATCH. Mr. President, we are now down to the final few minutes of this debate, and we are awaiting the majority leader to come to the floor and make his final comments and then I think we can vote.

Have the yeas and nays been ordered on the bill?

The PRESIDING OFFICER. The yeas and nays have not been ordered.

Mr. HATCH. Then I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. HATCH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Mr. President, has the substitute been accepted?

The PRESIDING OFFICER. The substitute has not been agreed to.

Mr. HATCH. I urge adoption of the substitute.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the amendment in the nature of a substitute, as amended.

The amendment (No. 1274) in the nature of a substitute, as amended, was agreed to.

Mr. HATCH. I move to reconsider the vote.

Mr. DANFORTH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. HATCH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, I ask unanimous consent that Senator GLENN be recognized to address the Senate for 3 minutes, and that, following his remarks, I be recognized to address the Senate for 3 minutes, and that, following my remarks, the Senate proceed to vote on the pending measure.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Ohio is recognized.

Mr. GLENN. Mr. President, I thank the majority leader very much for his consideration.

Mr. President, I rise to express my support for the Civil Rights Act of 1991. I cosponsored a similar measure in the last Congress, because, frankly, I am outraged that the Supreme Court in its wisdom has seen fit to overrule laws which provide protections against discrimination in the workplace.

I have long been an antidiscrimination advocate. I am opposed to discrimination against women, minorities, the handicapped, the aged. I oppose discrimination in all forums: private industry, government, and Congress, which I will discuss later in more detail.

The Civil Rights Act provides for the award of compensatory and punitive damages to women and minorities who have experienced discrimination in the workplace. The message to employers is simply that workplace discrimination is against the law and will not be tolerated.

The Civil Rights Act of 1991 would reverse the Supreme Court's 1989 decision in Wards Cove versus Atonio and restore the Court's decision in Griggs versus Duke Power Co. In Griggs, the Supreme Court held that practices which disproportionately exclude qualified women and minorities for the workplace are unlawful unless they serve a business necessity.

The definition of "business necessity," which caused heated controversy in the last Congress, is the same language which was passed in the ADA. Specifically, the bill provides that, in determining whether to hire an individual, the qualification standards, employment tests, or other selection criteria used by an employer must bear a "manifest relationship to the employment in question."

For example, height requirements for police officers tend to screen out women candidates because women naturally tend to be shorter. Therefore, such requirements are permissible only if they enable the police department to select better officers—a business necessity for public safety.

Congress has already granted similar relief to handicapped Americans in the Americans with Disabilities Act. I see no reason that women and minorities should not also be afforded these protections. With the ADA, Congress has started to address the problem of workplace discrimination. Let's not stop short of full protections for all Americans who are subjected to workplace discrimination.

Last year, the President commended the ADA as landmark legislation that "embodies what must be at the heart of all civil rights struggles." Earlier this year, the President said the ADA standard should not be applied to the Civil Rights Act.

I don't understand this, Mr. President. Both bills prohibit employment practices that have a disparate impact on members of protected classes. There is no reason to give different levels of protection to persons with disabilities than to persons who suffer discrimination based on their race, sex, religious beliefs, national origin, or color.

The debate over the Civil Rights Act is not a debate over legal technicalities. It is a fundamental debate about whether we—Congress and the administration—are committed to making equal job opportunity a reality. I am committed to that cause.

Last week, the Governmental Affairs Committee, which I chair, heard from two current and two former Federal employees who had been victims of discrimination in the workplace. Their stories were compelling and revealing. I commended them at the hearing, and I commend them here on the floor of the Senate for filing complaints and testing the system. Where and when that system is found wanting or ineffectual, we must move to improve it.

Discrimination is a cancer that we must work at removing and, if we cannot remove it from our hearts and minds, then we must at least make it illegal in the workplace—even if the workplace is on Capitol Hill.

Mr. President, one of the complaints I have heard from many business leaders in my State of Ohio is that Congress doesn't police itself; that we make laws for the rest of the country, but, we don't apply those laws to ourselves. This clearly smacks of a double standard.

Discrimination in the workplace is wrong and we should say so in the most forceful manner possible. If it is wrong in a plant in Cleveland, it is wrong in an office in the Hart Senate Office Building. And if the worker in Cleveland has a remedy—and he or she does—then, the worker in the Senate should also have a remedy.

In 1977, the late Senator Lee Metcalf and I joined in holding a series of hearings on the problem of employment discrimination by the U.S. Senate. At that time, there were only a handful of minorities and women who held professional positions among U.S. Senate staff.

As junior Senators, we took on an issue that was regarded as a taboo subject. The testimony from that hearing was truly startling. There were horror stories about Senators imposing unnecessary and ridiculous dress codes for women employees, flatly refusing to hire minority group members, and even conditioning jobs on water signs of the zodiac.

I especially remember the poignant testimony of the late and great Clarence Mitchell, who was the chief lobbyist for the National Association for the Advancement of Colored People. He not only testified about rampant racial discrimination in Senate offices, but he also told us of Senate offices and facilities—public facilities—from which he was banned because he was a black man.

These hearings led to the introduction of legislation which I developed.

That legislation proposed to establish an in-house body to hear and decide allegations of employment discrimination in the Senate.

In 1978, I attempted to attach this legislation as an amendment to the Humphrey-Hawkins economic package. That amendment was filibustered and then tabled in an emotional debate in which its opponents attacked the proposal as being totally without merit. Those opponents, many of whom are now supporting this measure, threatened to defeat or delay the entire Humphrey-Hawkins bill had this measure passed.

Throughout the years, I have maintained an interest in this cause and attempted—unsuccessfully—to advance it. In 1980, I reintroduced the bill and, later as Chairman of the Governmental Affairs Committee, proceeded to hold hearings.

In 1989, I reintroduced a new and improved version of the bill, and again held hearings in the Governmental Affairs Committee. The committee heard from many witnesses who discussed the legislation from an objective and substantive viewpoint. The Department of Labor and the Equal Employment Opportunity Commission each gave testimony which proved helpful to us.

The staff of the Governmental Affairs Committee worked diligently to receive input from the Senators on the committee. Unfortunately, we failed to get a consensus on the bill. However, much of the legislation which I had introduced and worked on was included in the Americans With Disabilities Act. For the first time, Senate employees had a defined avenue to travel if they had grievances. While Senate employees still lagged behind other public and private sector employees, with the ADA, we had made a start.

During the hearings which were held in my committee on September 14, 1989, I learned some startling facts about the labor force on Capitol Hill. I am not referring to the legislative assistants or the professional committee staff. Rather, I am talking about the window washers, the painters, the day workers, the cashiers, the groundskeepers, the plumbers and all the other workers who keep this place operating. They have expectations and should have the same protections that others in the private sector doing similar jobs have.

The American people look at us and say that we, Congress, make the rules but we do not play the game. We apply those rules to everyone else but we will not apply them to ourselves. That is harsh criticism, Mr. President, but it is true. After today, I am hopeful that it will no longer be true, at least in the area of civil rights.

Mr. President, what we are doing today is very much worth the effort. I am going to vote for this. But it deals with the narrow area of civil rights and important as those are, there are other areas that have not been addressed as well.

I believe the late Senator Ervin was right when he said of the exemptions passed by Congress: "It's a little like a doctor prescribing medicine for a patient that he himself would not take."

So I am not concerned about who gets credit for these things, whether it is my friend from Vermont, Mr. LEAHY, who has worked hard on this issue and I am sure he, too, takes a measure of satisfaction as the Senate moves, ever so slowly, forward toward addressing this issue.

The Grassley-Mitchell amendment before us today is similar to legislation which I introduced on June 13, 1989. Compare some of these things. We look at some of the things proposed in the past. We are very gradually catching up. Maybe we are going to pass some of these things.

After we finish comparing all these things and hoping to get them through, we should be passing things that will also address OSHA, address the other parts that we have not covered yet. But this is a good step forward.

Both my bill and the Grassley-Mitchell amendment would establish an office of in-house review for aggrieved congressional employees, the Grassley amendment limited to Senate employees.

Both would establish a tiered procedure which would include counseling and mediation, and an opportunity for filing a formal complaint as well as for a hearing before an in-house review panel. One key difference is the availability of judicial review.

The Grassley-Mitchell amendment would provide a Senate employee who does not receive satisfaction through the in-house procedure to petition for review by the U.S. Court of Appeals for the Federal Circuit.

Last night, the Senate voted down a point of order against the Grassley amendment because this provision was felt to be violative of the U.S. Constitution. My bill does not include the provision for this reason. However, I voted against the point of order because I support the precepts of the bill, obviously, and would like to see us legislate these rights to our employees.

Further similarities between my bill and the Grassley amendment include the available remedies. Both measures provide injunctive relief, costs and attorney fees, as well as reinstatement and back pay.

Both measures provide exemptions for political affiliation and place of residence.

My bill did not provide for coverage of presidential appointees. The Grassley amendment provides for such coverage.

Finally, the bills differ in the scope of coverage. The Grassley amendment would provide for coverage only under the 1964 Civil Rights Act, section 15 of the Age Discrimination in Employment Act of 1967, and for handicap or disability as defined by section 501 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990.

I support the Grassley amendment, but I believe that we should go further. The statutes cited in the Grassley amendment are all well and good. But, we need to extend the protections into other areas as well.

In addition to the statutes in the Grassley amendment, my bill would extend coverage also under the Fair Labor Standards Act and the Occupational Safety and Health Act of 1970.

I will continue my efforts to make sure that we provide a full range of protections for congressional employees.

Mr. President, I believe it was Bobby Kennedy who said, "It's remarkable what can be accomplished when it doesn't matter who gets the credit". I cannot vouch for the correctness of the quote. However, I can certainly vouch for the appropriateness of the sentiment. I do not care if the Senate passes my bill, Senator LEAHY's bill, or an amendment to the Civil Rights Act of 1991. I just hope we can put in place a process that allows a victim of sexual, racial, age, physical disability or any other type of discrimination, regardless of where they work, to have their complaint fairly heard and fairly judged.

I say in closing, with the time restraints we have here, the people, real, live flesh-and-blood employees on Capitol Hill, hurt no less from discrimination that other Americans, and they deserve to be treated fairly.

This bill addresses only part of the problem but it is a good start, a big first step which we must continue until discrimination, particularly on Capitol Hill, is no more.

I urge adoption of this bill.

Mr. MITCHELL. Mr. President, I commend Senator GLENN for the leadership which he has provided in the area of protection of Senate employees against discrimination. It was his pioneering legislation that was the framework within which the Grassley-Mitchell amendment was developed. And the internal procedures contained now in this bill are largely drawn from Senator GLENN's earlier legislation.

Mr. President, many other Senators deserve credit for the important step which the Senate is about to take, a step that is enormously significant, both in terms of the right that it will provide for wrongs which occur in our society, but almost as important for an end to divisiveness and division, at least we hope for some time, that has so tragically dominated this bill and this issue over the past 2 years.

Among those who deserve credit are the Senator from Utah, Senator HATCH, Senator DOLE, that group of Repub-

lican Senators who stood with Senator DANFORTH to forge this compromise and, of course, Senator MIKULSKI, Senator METZENBAUM, Senator BOREN, who contributed significantly on our side.

But I think in the final analysis we all recognize that two men are primarily responsible for this significant action. They are Senator KENNEDY, whose determination and leadership and perseverance over this difficult 2-year period, over all of the ups and downs that have occurred on this bill, has led us to this point. He has been an articulate, effective spokesman for the people whose rights will be vindicated by this legislation. And he has not wavered or sagged or grown weary in this effort to get us to this point.

I think even he would acknowledge that despite his enormous efforts he would not have been able to get us to this point were it not for the leadership of Senator DANFORTH. With determination, with conviction, and with an unshakeable commitment to the goal of society free of discrimination, Senator DANFORTH stepped in at the crucial moment and provided the leadership that has made this legislation possible.

They deserve the gratitude of their colleagues, and the gratitude of all Americans, not just those living today in our society, but those for years to come who will enjoy a society with less discrimination, with fewer racial divisions than would otherwise have been the case.

This is an important time. We owe a great debt of gratitude to many Senators, most especially Senators KENNEDY and DANFORTH for their leadership. I commend them and I think them.

Mr. President, I urge all Senators to vote for this important bill.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

On the question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Nebraska [Mr. KERREY] and the Senator from Pennsylvania [Mr. WOFFORD] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 93, nays 5, as follows:

[Rollcall Vote No. 238 Leg.]

YEAS—93

Adams	Biden	Bradley
Akaka	Bingaman	Breaux
Baucus	Bond	Brown
Bentsen	Boren	Bryan
Bumpers	Gramm	Moynihan
Burdick	Grassley	Murkowski
Burns	Harkin	Nickles
Byrd	Hatch	Nunn
Chafee	Hatfield	Packwood
Cochran	Heflin	Pell
Cohen	Hollings	Pressler
Conrad	Inouye	Pryor
Craig	Jeffords	Reid
Cranston	Johnston	Riegle
D'Amato	Kassebaum	Robb
Danforth	Kasten	Rockefeller
Daschle	Kennedy	Roth
DeConcini	Kerry	Rudman
Dixon	Kohl	Sanford
Dodd	Lautenberg	Sarbanes
Dole	Leahy	Sasser
Domenici	Levin	Seymour
Durenberger	Lieberman	Shelby
Exon	Lott	Simon
Ford	Lugar	Simpson
Fowler	Mack	Specter
Garn	McCain	Stevens
Glenn	McConnell	Thurmond
Gore	Metzenbaum	Warner
Gorton	Mikulski	Wellstone
Graham	Mitchell	Wirth

NAYS—5

Coats	Smith	Wallop
Helms	Symms	

NOT VOTING—2

Kerrey	Wofford

So the bill (S. 1745), as amended, was passed as follows:

S. 1745

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Civil Rights Act of 1991".

SEC. 2. FINDINGS.

The Congress finds that—

(1) additional remedies under Federal law are needed to deter unlawful harassment and intentional discrimination in the workplace;

(2) the decision of the Supreme Court in Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989) has weakened the scope and effectiveness of Federal civil rights protections; and

(3) legislation is necessary to provide additional protections against unlawful discrimination in employment.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to provide appropriate remedies for intentional discrimination and unlawful harassment in the workplace;

(2) to codify the concepts of "business necessity" and "job related" enunciated by the Supreme Court in Griggs v. Duke Power Co., 401 U.S. 424 (1971), and in the other Supreme Court decisions prior to Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989);

(3) to confirm statutory authority and provide statutory guidelines for the adjudication of disparate impact suits under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); and

(4) to respond to recent decisions of the Supreme Court by expanding the scope of relevant civil rights statutes in order to provide adequate protection to victims of discrimination.

TITLE I—FEDERAL CIVIL RIGHTS REMEDIES

SEC. 101. PROHIBITION AGAINST ALL RACIAL DISCRIMINATION IN THE MAKING AND ENFORCEMENT OF CONTRACTS.

Section 1977 of the Revised Statutes (42 U.S.C. 1981) is amended—

(1) by inserting "(a)" before "All persons within"; and

(2) by adding at the end the following new subsections:

"(b) For purposes of this section, the term 'make and enforce contracts' includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

"(c) The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.".

SEC. 102. DAMAGES IN CASES OF INTENTIONAL DISCRIMINATION.

The Revised Statutes are amended by inserting after section 1977 (42 U.S.C. 1981) the following new section:

"SEC. 1977A. DAMAGES IN CASES OF INTENTIONAL DISCRIMINATION IN EMPLOYMENT.

"(a) RIGHT OF RECOVERY.—

"(1) CIVIL RIGHTS.—In an action brought by a complaining party under section 706 or 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5) against a respondent who engaged in unlawful intentional discrimination (not an employment practice that is unlawful because of its disparate impact) prohibited under section 703, 704, or 717 of the Act (42 U.S.C. 2000e–2 or 2000e–3), and provided that the complaining party cannot recover under section 1977 of the Revised Statutes (42 U.S.C. 1981), the complaining party may recover compensatory and punitive damages as allowed in subsection (b), in addition to any relief authorized by section 706(g) of the Civil Rights Act of 1964, from the respondent.

"(2) DISABILITY.—In an action brought by a complaining party under the powers, remedies, and procedures set forth in section 706 or 717 of the Civil Rights Act of 1964 (as provided in section 107(a) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12117(a)), and section 505(a)(1) of the Rehabilitation Act of 1973 (29 U.S.C. 794a(a)(1)), respectively) against a respondent who engaged in unlawful intentional discrimination (not an employment practice that is unlawful because of its disparate impact) under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) and the regulations implementing section 501, or who violated the requirements of section 501 of the Act or the regulations implementing section 501 concerning the provision of a reasonable accommodation, or section 102 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112), or committed a violation of section 102(b)(5) of the Act, against an individual, the complaining party may recover compensatory and punitive damages as allowed in subsection (b), in addition to any relief authorized by section 706(g) of the Civil Rights Act of 1964, from the respondent.

"(3) REASONABLE ACCOMMODATION AND GOOD FAITH EFFORT.—In cases where a discriminatory practice involves the provision of a reasonable accommodation pursuant to section 102(b)(5) of the Americans with Disabilities Act of 1990 or regulations implementing section 501 of the Rehabilitation Act of 1973, damages may not be awarded under this section where the covered entity demonstrates good faith efforts, in consultation with the person with the disability who has informed the covered entity that accommodation is needed, to identify and make a reasonable accommodation that would provide such individual with an equally effective opportunity and would not cause an undue hardship on the operation of the business.

"(b) COMPENSATORY AND PUNITIVE DAMAGES.—

"(1) DETERMINATION OF PUNITIVE DAMAGES.—A complaining party may recover pu-

nitive damages under this section against a respondent (other than a government, government agency or political subdivision) if the complaining party demonstrates that the respondent engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual.

"(2) EXCLUSIONS FROM COMPENSATORY DAMAGES.—Compensatory damages awarded under this section shall not include backpay, interest on backpay, or any other type of relief authorized under section 706(g) of the Civil Rights Act of 1964.

"(3) LIMITATIONS.—The sum of the amount of compensatory damages awarded under this section for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, and the amount of punitive damages awarded under this section, shall not exceed, for each complaining party—

"(A) in the case of a respondent who has more than 14 and fewer than 101 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $50,000;

"(B) in the case of a respondent who has more than 100 and fewer than 201 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $100,000; and

"(C) in the case of a respondent who has more than 200 and fewer than 501 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $200,000; and

"(D) in the case of a respondent who has more than 500 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $300,000.

"(4) CONSTRUCTION.—Nothing in this section shall be construed to limit the scope of, or the relief available under, section 1977 of the Revised Statutes (42 U.S.C. 1981).

"(c) JURY TRIAL.—If a complaining party seeks compensatory or punitive damages under this section—

"(1) any party may demand a trial by jury; and

"(2) the court shall not inform the jury of the limitations described in subsection (b)(3).

"(d) DEFINITIONS.—As used in this section:

"(1) COMPLAINING PARTY.—The term 'complaining party' means—

"(A) in the case of a person seeking to bring an action under subsection (a)(1), the Equal Employment Opportunity Commission, the Attorney General, or a person who may bring an action or proceeding under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); or

"(B) in the case of a person seeking to bring an action under subsection (a)(2), the Equal Employment Opportunity Commission, the Attorney General, or a person who may bring an action or proceeding under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

"(2) DISCRIMINATORY PRACTICE.—The term 'discriminatory practice' means the discrimination described in paragraph (1), or the disparate treatment or the violation described in paragraph (2), of subsection (a).

SEC. 103. ATTORNEY'S FEES.

The last sentence of section 722 of the Revised Statutes (42 U.S.C. 1988) is amended by inserting ", 1981A" after "1981".

SEC. 104. DEFINITIONS.

Section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e) is amended by adding at the end the following new subsections:

"(l) The term 'complaining party' means the Commission, the Attorney General, or a person who may bring an action or proceeding under this title.

"(m) The term 'demonstrates' means meets the burdens of production and persuasion.

"(n) The term 'respondent' means an employer, employment agency, labor organization, joint labor-management committee controlling apprenticeship or other training or retraining program, including an on-the-job training program, or Federal entity subject to section 717.".

SEC. 105. BURDEN OF PROOF IN DISPARATE IMPACT CASES.

(a) Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2) is amended by adding at the end the following new subsection:

"(k)(1)(A) An unlawful employment practice based on disparate impact is established under this title only if—

"(i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; or

"(ii) the complaining party makes the demonstration described in subparagraph (C) with respect to an alternative employment practice and the respondent refuses to adopt such alternative employment practice.

"(B)(i) With respect to demonstrating that a particular employment practice causes a disparate impact as described in subparagraph (A)(i), the complaining party shall demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complaining party can demonstrate to the court that the elements of a respondent's decisionmaking process are not capable of separation for analysis, the decisionmaking process may be analyzed as one employment practice.

"(ii) If the respondent demonstrates that a specific employment practice does not cause the disparate impact, the respondent shall not be required to demonstrate that such practice is required by business necessity.

"(C) The demonstration referred to by subparagraph (A)(ii) shall be in accordance with the law as it existed on June 4, 1989, with respect to the concept of 'alternative employment practice'.

"(2) A demonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination under this title.

"(3) Notwithstanding any other provision of this title, a rule barring the employment of an individual who currently and knowingly uses or possesses a controlled substance, as defined in schedules I and II of section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)), other than the use or possession of a drug taken under the supervision of a licensed health care professional, or any other use or possession authorized by the Controlled Substances Act or any other provision of Federal law, shall be considered an unlawful employment practice under this title only if such rule is adopted or applied with an intent to discriminate because of race, color, religion, sex, or national origin.".

(b) No statements other than the interpretive memorandum appearing at Vol. 137 Congressional Record S 15276 (daily ed. Oct. 25, 1991) shall be considered legislative history of, or relied upon in any way as legislative history in construing or applying, any provision of this Act that relates to Wards Cove—Business necessity/cumulation/alternative business practice.

SEC. 106. PROHIBITION AGAINST DISCRIMINATORY USE OF TEST SCORES.

Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2) (as amended by section 105) is further amended by adding at the end the following new subsection:

"(l) It shall be an unlawful employment practice for a respondent, in connection with the selection or referral of applicants or candidates for employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of, employment related tests on the basis of race, color, religion, sex, or national origin.".

SEC. 107. CLARIFYING PROHIBITION AGAINST IMPERMISSIBLE CONSIDERATION OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN IN EMPLOYMENT PRACTICES.

(a) IN GENERAL.—Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2) (as amended by sections 105 and 106) is further amended by adding at the end the following new subsection:

"(m) Except as otherwise provided in this title, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.".

(b) ENFORCEMENT PROVISIONS.—Section 706(g) of such Act (42 U.S.C. 2000e–5(g)) is amended—

(1) by designating the first through third sentences as paragraph (1);

(2) by designating the fourth sentence as paragraph (2)(A) and indenting accordingly; and

(3) by adding at the end the following new subparagraph:

"(B) On a claim in which an individual proves a violation under section 703(m) and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court—

"(i) may grant declaratory relief, injunctive relief (except as provided in clause (ii)), and attorney's fees and costs demonstrated to be directly attributable only to the pursuit of a claim under section 703(m); and

"(ii) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment, described in subparagraph (A).".

SEC. 108. FACILITATING PROMPT AND ORDERLY RESOLUTION OF CHALLENGES TO EMPLOYMENT PRACTICES IMPLEMENTING LITIGATED OR CONSENT JUDGMENTS OR ORDERS.

Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2) (as amended by sections 105, 106, and 107 of this title) is further amended by adding at the end the following new subsection:

"(n)(1)(A) Notwithstanding any other provision of law, and except as provided in paragraph (2), an employment practice that implements and is within the scope of a litigated or consent judgment or order that resolves a claim of employment discrimination under the Constitution or Federal civil rights laws may not be challenged under the circumstances described in subparagraph (B).

"(B) A practice described in subparagraph (A) may not be challenged in a claim under the Constitution or Federal civil rights laws—

"(i) by a person who, prior to the entry of the judgment or order described in subparagraph (A), had—

"(I) actual notice of the proposed judgment or order sufficient to apprise such person that such judgment or order might adversely

affect the interests and legal rights of such person and that an opportunity was available to present objections to such judgment or order by a future date certain; and

"(II) a reasonable opportunity to present objections to such judgment or order; or

"(ii) by a person whose interests were adequately represented by another person who had previously challenged the judgment or order on the same legal grounds and with a similar factual situation, unless there has been an intervening change in law or fact.

"(2) Nothing in this subsection shall be construed to—

"(A) alter the standards for intervention under rule 24 of the Federal Rules of Civil Procedure or apply to the rights of parties who have successfully intervened pursuant to such rule in the proceeding in which the parties intervened;

"(B) apply to the rights of parties to the action in which a litigated or consent judgment or order was entered, or of members of a class represented or sought to be represented in such action, or of members of a group on whose behalf relief was sought in such action by the Federal Government;

"(C) prevent challenges to a litigated or consent judgment or order on the ground that such judgment or order was obtained through collusion or fraud, or is transparently invalid or was entered by a court lacking subject matter jurisdiction; or

"(D) authorize or permit the denial to any person of the due process of law required by the Constitution.

"(3) Any action not precluded under this subsection that challenges an employment consent judgment or order described in paragraph (1) shall be brought in the court, and if possible before the judge, that entered such judgment or order. Nothing in this subsection shall preclude a transfer of such action pursuant to section 1404 of title 28, United States Code.".

SEC. 109. PROTECTION OF EXTRATERRITORIAL EMPLOYMENT.

(a) DEFINITION OF EMPLOYEE.—Section 701(f) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(f)) and section 101(4) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111(4)) are each amended by adding at the end the following: "With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.".

(b) EXEMPTION.—

(1) CIVIL RIGHTS ACT OF 1964.—Section 702 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–1) is amended—

(A) by inserting "(a)" after "SEC. 702."; and

(B) by adding at the end the following:

"(b) It shall not be unlawful under section 703 or 704 for an employer (or a corporation controlled by an employer), labor organization, employment agency, or joint management committee controlling apprenticeship or other training or retraining (including on-the-job training programs) to take any action otherwise prohibited by such section, with respect to an employee in a workplace in a foreign country if compliance with such section would cause such employer (or such corporation), such organization, such agency, or such committee to violate the law of the foreign country in which such workplace is located.

"(c)(1) If an employer controls a corporation whose place of incorporation is a foreign country, any practice prohibited by section 703 or 704 engaged in by such corporation shall be presumed to be engaged in by such employer.

"(2) Sections 703 and 704 shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.

"(3) For purposes of this subsection, the determination of whether an employer controls a corporation shall be based on—

"(A) the interrelation of operations;

"(B) the common management;

"(C) the centralized control of labor relations; and

"(D) the common ownership or financial control,

of the employer and the corporation.".

(2) AMERICANS WITH DISABILITIES ACT OF 1990.—Section 102 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112) is amended—

(A) by redesignating subsection (c) as subsection (d); and

(B) by inserting after subsection (b) the following new subsection:

"(c) COVERED ENTITIES IN FOREIGN COUNTRIES.—

"(1) IN GENERAL.—It shall not be unlawful under this section for a covered entity to take any action that constitutes discrimination under this section with respect to an employee in a workplace in a foreign country if compliance with this section would cause such covered entity to violate the law of the foreign country in which such workplace is located.

"(2) CONTROL OF CORPORATION.—

"(A) PRESUMPTION.—If an employer controls a corporation whose place of incorporation is a foreign country, any practice that constitutes discrimination under this section and is engaged in by such corporation shall be presumed to be engaged in by such employer.

"(B) EXCEPTION.—This section shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.

"(C) DETERMINATION.—For purposes of this paragraph, the determination of whether an employer controls a corporation shall be based on—

"(i) the interrelation of operations;

"(ii) the common management;

"(iii) the centralized control of labor relations; and

"(iv) the common ownership or financial control,

of the employer and the corporation.".

(c) APPLICATION OF AMENDMENTS.—The amendments made by this section shall not apply with respect to conduct occurring before the date of the enactment of this Act.

SEC. 110. TECHNICAL ASSISTANCE TRAINING INSTITUTE.

(a) TECHNICAL ASSISTANCE.—Section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4) is amended by adding at the end the following new subsection:

"(j)(1) The Commission shall establish a Technical Assistance Training Institute, through which the Commission shall provide technical assistance and training regarding the laws and regulations enforced by the Commission.

"(2) An employer or other entity covered under this title shall not be excused from compliance with the requirements of this title because of any failure to receive technical assistance under this subsection.

"(3) There are authorized to be appropriated to carry out this subsection such sums as may be necessary for fiscal year 1992.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 111. EDUCATION AND OUTREACH.

Section 705(h) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4(h)) is amended—

(1) by inserting "(1)" after "(h)"; and

(2) by adding at the end the following new paragraph:

"(2) In exercising its powers under this title, the Commission shall carry out educational and outreach activities (including dissemination of information in languages other than English) targeted to—

"(A) individuals who historically have been victims of employment discrimination and have not been equitably served by the Commission; and

"(B) individuals on whose behalf the Commission has authority to enforce any other law prohibiting employment discrimination, concerning rights and obligations under this title or such law, as the case may be.".

SEC. 112. EXPANSION OF RIGHT TO CHALLENGE DISCRIMINATORY SENIORITY SYSTEMS.

Section 706(e) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(e)) is amended—

(1) by inserting "(1)" before "A charge under this section"; and

(2) by adding at the end the following new paragraph:

"(2) For purposes of this section, an unlawful employment practice occurs, with respect to a seniority system that has been adopted for an intentionally discriminatory purpose in violation of this title (whether or not that discriminatory purpose is apparent on the face of the seniority provision), when the seniority system is adopted, when an individual becomes subject to the seniority system, or when a person aggrieved is injured by the application of the seniority system or provision of the system.".

SEC. 113. AUTHORIZING AWARD OF EXPERT FEES.

(a) REVISED STATUTES.—Section 722 of the Revised Statutes is amended—

(1) by designating the first and second sentences as subsections (a) and (b), respectively, and indenting accordingly; and

(2) by adding at the end the following new subsection:

"(c) In awarding an attorney's fee under subsection (b) in any action or proceeding to enforce a provision of sections 1977 or 1977A of the Revised Statutes, the court, in its discretion, may include expert fees as part of the attorney's fee.".

(b) CIVIL RIGHTS ACT OF 1964.—Section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(k)) is amended by inserting "(including expert fees)" after "attorney's fee".

SEC. 114. PROVIDING FOR INTEREST AND EXTENDING THE STATUTE OF LIMITATIONS IN ACTIONS AGAINST THE FEDERAL GOVERNMENT.

Section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16) is amended—

(1) in subsection (c), by striking "thirty days" and inserting "90 days"; and

(2) in subsection (d), by inserting before the period ", and the same interest to compensate for delay in payment shall be available as in cases involving nonpublic parties.".

SEC. 115. NOTICE OF LIMITATIONS PERIOD UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967.

Section 7(e) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 626(e)) is amended—

(1) by striking paragraph (2);

(2) by striking the paragraph designation in paragraph (1);

(3) by striking "Sections 6 and" and inserting "Section"; and

(4) by adding at the end the following:

"If a charge filed with the Commission under this Act is dismissed or the proceedings of

the Commission are otherwise terminated by the Commission, the Commission shall notify the person aggrieved. A civil action may be brought under this section by a person defined in section 11(a) against the respondent named in the charge within 90 days after the date of the receipt of such notice.".

SEC. 116. LAWFUL COURT-ORDERED REMEDIES, AFFIRMATIVE ACTION, AND CONCILIATION AGREEMENTS NOT AFFECTED.

Nothing in the amendments made by this title shall be construed to affect court-ordered remedies, affirmative action, or conciliation agreements, that are in accordance with the law.

SEC. 117. COVERAGE OF HOUSE OF REPRESENTATIVES AND THE AGENCIES OF THE LEGISLATIVE BRANCH.

(a) COVERAGE OF THE HOUSE OF REPRESENTATIVES.—

(1) IN GENERAL.—Notwithstanding any provision of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) or of other law, the purposes of such title shall, subject to paragraph (2), apply in their entirety to the House of Representatives.

(2) EMPLOYMENT IN THE HOUSE.—

(A) APPLICATION.—The rights and protections under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) shall, subject to subparagraph (B), apply with respect to any employee in an employment position in the House of Representatives and any employing authority of the House of Representatives.

(B) ADMINISTRATION.—

(i) IN GENERAL.—In the administration of this paragraph, the remedies and procedures made applicable pursuant to the resolution described in clause (ii) shall apply exclusively.

(ii) RESOLUTION.—The resolution referred to in clause (i) is the Fair Employment Practices Resolution (House Resolution 558 of the One Hundredth Congress, as agreed to October 4, 1988), as incorporated into the Rules of the House of Representatives of the One Hundred Second Congress as Rule LI, or any other provision that continues in effect the provisions of such resolution.

(C) EXERCISE OF RULEMAKING POWER.—The provisions of subparagraph (B) are enacted by the House of Representatives as an exercise of the rulemaking power of the House of Representatives, with full recognition of the right of the House to change its rules, in the same manner, and to the same extent as in the case of any other rule of the House.

(b) INSTRUMENTALITIES OF CONGRESS.—

(1) IN GENERAL.—The rights and protections under this title and title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) shall, subject to paragraph (2), apply with respect to the conduct of each instrumentality of the Congress.

(2) ESTABLISHMENT OF REMEDIES AND PROCEDURES BY INSTRUMENTALITIES.—The chief official of each instrumentality of the Congress shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to paragraph (1). Such remedies and procedures shall apply exclusively, except for the employees who are defined as Senate employees, in section 301(c)(1).

(3) REPORT TO CONGRESS.—The chief official of each instrumentality of the Congress shall, after establishing remedies and procedures for purposes of paragraph (2), submit to the Congress a report describing the remedies and procedures.

(4) DEFINITION OF INSTRUMENTALITIES.—For purposes of this section, instrumentalities of the Congress include the following: the Architect of the Capitol, the Congressional Budget Office, the General Accounting Office, the Government Printing Office, the Office of Technology Assessment, and the United States Botanic Garden.

(5) CONSTRUCTION.—Nothing in this section shall alter the enforcement procedures for individuals protected under section 717 of title VII for the Civil Rights Act of 1964 (42 U.S.C. 2000e–16).

SEC. 118. ALTERNATIVE MEANS OF DISPUTE RESOLUTION.

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes arising under the Acts or provisions of Federal law amended by this title.

TITLE II—GLASS CEILING

SEC. 201. SHORT TITLE.

This title may be cited as the "Glass Ceiling Act of 1991".

SEC. 202. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) despite a dramatically growing presence in the workplace, women and minorities remain underrepresented in management and decisionmaking positions in business;

(2) artificial barriers exist to the advancement of women and minorities in the workplace;

(3) United States corporations are increasingly relying on women and minorities to meet employment requirements and are increasingly aware of the advantages derived from a diverse work force;

(4) the "Glass Ceiling Initiative" undertaken by the Department of Labor, including the release of the report entitled "Report on the Glass Ceiling Initiative", has been instrumental in raising public awareness of—

(A) the underrepresentation of women and minorities at the management and decisionmaking levels in the United States work force;

(B) the underrepresentation of women and minorities in line functions in the United States work force;

(C) the lack of access for qualified women and minorities to credential-building developmental opportunities; and

(D) the desirability of eliminating artificial barriers to the advancement of women and minorities to such levels;

(5) the establishment of a commission to examine issues raised by the Glass Ceiling Initiative would help—

(A) focus greater attention on the importance of eliminating artificial barriers to the advancement of women and minorities to management and decisionmaking positions in business; and

(B) promote work force diversity;

(6) a comprehensive study that includes analysis of the manner in which management and decisionmaking positions are filled, the developmental and skill-enhancing practices used to foster the necessary qualifications for advancement, and the compensation programs and reward structures utilized in the corporate sector would assist in the establishment of practices and policies promoting opportunities for, and eliminating artificial barriers to, the advancement of women and minorities to management and decisionmaking positions;

(7) a national award recognizing employers whose practices and policies promote opportunities for, and eliminate artificial barriers to, the advancement of women and minorities will foster the advancement of women and minorities into higher level positions by—

(A) helping to encourage United States companies to modify practices and policies to promote opportunities for, and eliminate artificial barriers to, the upward mobility of women and minorities; and

(B) providing specific guidance for other United States employers that wish to learn how to revise practices and policies to improve the access and employment opportunities of women and minorities; and

(8) employment quotas based on race, sex, national origin, religious belief, or disability—

(A) are antithetical to the historical commitment of the Nation to the principle of equality of opportunity; and

(B) do not serve any legitimate business or social purpose.

(b) PURPOSE.—The purpose of this title is to establish—

(1) a Glass Ceiling Commission to study—

(A) the manner in which business fills management and decisionmaking positions;

(B) the developmental and skill-enhancing practices used to foster the necessary qualifications for advancement into such positions; and

(C) the compensation programs and reward structures currently utilized in the workplace; and

(2) an annual award for excellence in promoting a more diverse skilled work force at the management and decisionmaking levels in business.

SEC. 203. ESTABLISHMENT OF GLASS CEILING COMMISSION.

(a) IN GENERAL.—There is established a Glass Ceiling Commission (referred to in this title as the "Commission"), to conduct a study and prepare recommendations concerning—

(1) eliminating artificial barriers to the advancement of women and minorities; and

(2) increasing the opportunities and developmental experiences of women and minorities to foster advancement of women and minorities to management and decisionmaking positions in business.

(b) MEMBERSHIP.—

(1) COMPOSITION.—The Commission shall be composed of 21 members, including—

(A) six individuals appointed by the President;

(B) six individuals appointed jointly by the Speaker of the House of Representatives and the Majority Leader of the Senate;

(C) one individual appointed by the Majority Leader of the House of Representatives;

(D) one individual appointed by the Minority Leader of the House of Representatives;

(E) one individual appointed by the Majority Leader of the Senate;

(F) one individual appointed by the Minority Leader of the Senate;

(G) two Members of the House of Representatives appointed jointly by the Majority Leader and the Minority Leader of the House of Representatives;

(H) two Members of the Senate appointed jointly by the Majority Leader and the Minority Leader of the Senate; and

(I) the Secretary of Labor.

(2) CONSIDERATIONS.—In making appointments under subparagraphs (A) and (B) of paragraph (1), the appointing authority shall consider the background of the individuals, including whether the individuals—

(A) are members of organizations representing women and minorities, and other related interest groups;

(B) hold management or decisionmaking positions in corporations or other business

entities recognized as leaders on issues relating to equal employment opportunity; and

(C) possess academic expertise or other recognized ability regarding employment issues.

(3) BALANCE.—In making the appointments under subparagraphs (A) and (B) of paragraph (1), each appointing authority shall seek to include an appropriate balance of appointees from among the groups of appointees described in subparagraphs (A), (B), and (C) of paragraph (2).

(c) CHAIRPERSON.—The Secretary of Labor shall serve as the Chairperson of the Commission.

(d) TERM OF OFFICE.—Members shall be appointed for the life of the Commission.

(e) VACANCIES.—Any vacancy occurring in the membership of the Commission shall be filled in the same manner as the original appointment for the position being vacated. The vacancy shall not affect the power of the remaining members to execute the duties of the Commission.

(f) MEETINGS.—

(1) MEETINGS PRIOR TO COMPLETION OF REPORT.—The Commission shall meet not fewer than five times in connection with and pending the completion of the report described in section 204(b). The Commission shall hold additional meetings if the Chairperson or a majority of the members of the Commission request the additional meetings in writing.

(2) MEETINGS AFTER COMPLETION OF REPORT.—The Commission shall meet once each year after the completion of the report described in section 204(b). The Commission shall hold additional meetings if the Chairperson or a majority of the members of the Commission request the additional meetings in writing.

(g) QUORUM.—A majority of the Commission shall constitute a quorum for the transaction of business.

(h) COMPENSATION AND EXPENSES.—

(1) COMPENSATION.—Each member of the Commission who is not an employee of the Federal Government shall receive compensation at the daily equivalent of the rate specified for level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day the member is engaged in the performance of duties for the Commission, including attendance at meetings and conferences of the Commission, and travel to conduct the duties of the Commission.

(2) TRAVEL EXPENSES.—Each member of the Commission shall receive travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, for each day the member is engaged in the performance of duties away from the home or regular place of business of the member.

(3) EMPLOYMENT STATUS.—A member of the Commission, who is not otherwise an employee of the Federal Government, shall not be deemed to be an employee of the Federal Government except for the purposes of—

(A) the tort claims provisions of chapter 171 of title 28, United States Code; and

(B) subchapter I of chapter 81 of title 5, United States Code, relating to compensation for work injuries.

SEC. 204. RESEARCH ON ADVANCEMENT OF WOMEN AND MINORITIES TO MANAGEMENT AND DECISIONMAKING POSITIONS IN BUSINESS.

(a) ADVANCEMENT STUDY.—The Commission shall conduct a study of opportunities for, and artificial barriers to, the advancement of women and minorities to management and decisionmaking positions in business. In conducting the study, the Commission shall—

(1) examine the preparedness of women and minorities to advance to management and decisionmaking positions in business;

(2) examine the opportunities for women and minorities to advance to management and decisionmaking positions in business;

(3) conduct basic research into the practices, policies, and manner in which management and decisionmaking positions in business are filled;

(4) conduct comparative research of businesses and industries in which women and minorities are promoted to management and decisionmaking positions, and businesses and industries in which women and minorities are not promoted to management and decisionmaking positions;

(5) compile a synthesis of available research on programs and practices that have successfully led to the advancement of women and minorities to management and decisionmaking positions in business, including training programs, rotational assignments, developmental programs, reward programs, employee benefit structures, and family leave policies; and

(6) examine any other issues and information relating to the advancement of women and minorities to management and decisionmaking positions in business.

(b) REPORT.—Not later than 15 months after the date of the enactment of this Act, the Commission shall prepare and submit to the President and the appropriate committees of Congress a written report containing—

(1) the findings and conclusions of the Commission resulting from the study conducted under subsection (a); and

(2) recommendations based on the findings and conclusions described in paragraph (1) relating to the promotion of opportunities for, and elimination of artificial barriers to, the advancement of women and minorities to management and decisionmaking positions in business, including recommendations for—

(A) policies and practices to fill vacancies at the management and decisionmaking levels;

(B) developmental practices and procedures to ensure that women and minorities have access to opportunities to gain the exposure, skills, and expertise necessary to assume management and decisionmaking positions;

(C) compensation programs and reward structures utilized to reward and retain key employees; and

(D) the use of enforcement (including such enforcement techniques as litigation, complaint investigations, compliance reviews, conciliation, administrative regulations, policy guidance, technical assistance, training, and public education) of Federal equal employment opportunity laws by Federal agencies as a means of eliminating artificial barriers to the advancement of women and minorities in employment.

(c) ADDITIONAL STUDY.—The Commission may conduct such additional study of the advancement of women and minorities to management and decisionmaking positions in business as a majority of the members of the Commission determines to be necessary.

SEC. 205. ESTABLISHMENT OF THE NATIONAL AWARD FOR DIVERSITY AND EXCELLENCE IN AMERICAN EXECUTIVE MANAGEMENT.

(a) IN GENERAL.—There is established the National Award for Diversity and Excellence in American Executive Management, which shall be evidenced by a medal bearing the inscription "Frances Perkins-Elizabeth Hanford Dole National Award for Diversity and Excellence in American Executive Management". The medal shall be of such design and materials, and bear such additional inscriptions, as the Commission may prescribe.

(b) CRITERIA FOR QUALIFICATION.—To qualify to receive an award under this section a business shall—

(1) submit a written application to the Commission, at such time, in such manner, and containing such information as the Commission may require, including at a minimum information that demonstrates that the business has made substantial effort to promote the opportunities and developmental experiences of women and minorities to foster advancement to management and decisionmaking positions within the business, including the elimination of artificial barriers to the advancement of women and minorities, and deserves special recognition as a consequence; and

(2) meet such additional requirements and specifications as the Commission determines to be appropriate.

(c) MAKING AND PRESENTATION OF AWARD.—

(1) AWARD.—After receiving recommendations from the Commission, the President or the designated representative of the President shall annually present the award described in subsection (a) to businesses that meet the qualifications described in subsection (b).

(2) PRESENTATION.—The President or the designated representative of the President shall present the award with such ceremonies as the President or the designated representative of the President may determine to be appropriate.

(3) PUBLICITY.—A business that receives an award under this section may publicize the receipt of the award and use the award in its advertising, if the business agrees to help other United States businesses improve with respect to the promotion of opportunities and developmental experiences of women and minorities to foster the advancement of women and minorities to management and decisionmaking positions.

(d) BUSINESS.—For the purposes of this section, the term "business" includes—

(1)(A) a corporation, including nonprofit corporations;

(B) a partnership;

(C) a professional association;

(D) a labor organization; and

(E) a business entity similar to an entity described in subparagraphs (A) through (D);

(2) an education referral program, a training program, such as an apprenticeship or management training program or a similar program; and

(3) a joint program formed by a combination of any entities discribed in paragraph 1 or 2.

SEC. 206. POWERS OF THE COMMISSION.

(a) IN GENERAL.—The Commission is authorized to—

(1) hold such hearings and sit and act at such times;

(2) take such testimony;

(3) have such printing and binding done;

(4) enter into such contracts and other arrangements;

(5) make such expenditures; and

(6) take such other actions;

as the Commission may determine to be necessary to carry out the duties of the Commission.

(b) OATHS.—Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(c) OBTAINING INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal agency such infor-

mation as the Commission may require to carry out its duties.

(d) VOLUNTARY SERVICE.—Notwithstanding section 1342 of title 31, United States Code, the Chairperson of the Commission may accept for the Commission voluntary services provided by a member of the Commission.

(e) GIFTS AND DONATIONS.—The Commission may accept, use, and dispose of gifts or donations of property in order to carry out the duties of the Commission.

(f) USE OF MAIL.—The Commission may use the United States mails in the same manner and under the same conditions as Federal agencies.

SEC. 207. CONFIDENTIALITY OF INFORMATION.

(a) INDIVIDUAL BUSINESS INFORMATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), and notwithstanding section 552 of title 5, United States Code, in carrying out the duties of the Commission, including the duties described in sections 204 and 205, the Commission shall maintain the confidentiality of all information that concerns—

(A) the employment practices and procedures of individual businesses; or

(B) individual employees of the businesses.

(2) CONSENT.—The content of any information described in paragraph (1) may be disclosed with the prior written consent of the business or employee, as the case may be, with respect to which the information is maintained.

(b) AGGREGATE INFORMATION.—In carrying out the duties of the Commission, the Commission may disclose—

(1) information about the aggregate employment practices or procedures of a class or group of businesses; and

(2) information about the aggregate characteristics of employees of the businesses, and related aggregate information about the employees.

SEC. 208. STAFF AND CONSULTANTS.

(a) STAFF.—

(1) APPOINTMENT AND COMPENSATION.—The Commission may appoint and determine the compensation of such staff as the Commission determines to be necessary to carry out the duties of the Commission.

(2) LIMITATIONS.—The rate of compensation for each staff member shall not exceed the daily equivalent of the rate specified for level V of the Executive Schedule under section 5316 of title 5, United States Code for each day the staff member is engaged in the performance of duties for the Commission. The Commission may otherwise appoint and determine the compensation of staff without regard to the provisions of title 5, United States Code, that govern appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, that relate to classification and General Schedule pay rates.

(b) EXPERTS AND CONSULTANTS.—The Chairperson of the Commission may obtain such temporary and intermittent services of experts and consultants and compensate the experts and consultants in accordance with section 3109(b) of title 5, United States Code, as the Commission determines to be necessary to carry out the duties of the Commission.

(c) DETAIL OF FEDERAL EMPLOYEES.—On the request of the Chairperson of the Commission, the head of any Federal agency shall detail, without reimbursement, any of the personnel of the agency to the Commission to assist the Commission in carrying out its duties. Any detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

(d) TECHNICAL ASSISTANCE.—On the request of the Chairperson of the Commission, the head of a Federal agency shall provide such technical assistance to the Commission as the Commission determines to be necessary to carry out its duties.

SEC. 209. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Commission such sums as may be necessary to carry out the provisions of this title. The sums shall remain available until expended, without fiscal year limitation.

SEC. 210. TERMINATION.

(a) COMMISSION.—Notwithstanding section 15 of the Federal Advisory Committee Act (5 U.S.C. App.), the Commission shall terminate 4 years after the date of the enactment of this Act.

(b) AWARD.—The authority to make awards under section 205 shall terminate 4 years after the date of the enactment of this Act.

TITLE III—GOVERNMENT EMPLOYEE RIGHTS

SEC. 301. GOVERNMENT EMPLOYEE RIGHTS ACT OF 1991.

(a) SHORT TITLE.—This title may be cited as the "Government Employee Rights Act of 1991".

(b) PURPOSE.—The purpose of this title is to provide procedures to protect the right of Senate and other government employees, with respect to their public employment, to be free of discrimination on the basis of race, color, religion, sex, national origin, age, or disability.

(c) DEFINITIONS.—For purposes of this title:

(1) SENATE EMPLOYEE.—The term "Senate employee" or "employee" means—

(A) any employee whose pay is disbursed by the Secretary of the Senate;

(B) any employee of the Architect of the Capitol who is assigned to the Senate Restaurants or to the Superintendent of the Senate Office Buildings;

(C) any applicant for a position that will last 90 days or more and that is to be occupied by an individual described in subparagraph (A) or (B); or

(D) any individual who was formerly an employee described in subparagraph (A) or (B) and whose claim of a violation arises out of the individual's Senate employment.

(2) HEAD OF EMPLOYING OFFICE.—The term "head of employing office" means the individual who has final authority to appoint, hire, discharge, and set the terms, conditions or privileges of the Senate employment of an employee.

(3) VIOLATION.—The term "violation" means a practice that violates section 302 of this title.

SEC. 302. DISCRIMINATORY PRACTICES PROHIBITED.

All personnel actions affecting employees of the Senate shall be made free from any discrimination based on—

(1) race, color, religion, sex, or national origin, within the meaning of section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16);

(2) age, within the meaning of section 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a); or

(3) handicap or disability, within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) and sections 102–104 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112–14).

SEC. 303. ESTABLISHMENT OF OFFICE OF SENATE FAIR EMPLOYMENT PRACTICES.

(a) IN GENERAL.—There is established, as an office of the Senate, the Office of Senate Fair Employment Practices (referred to in this title as the "Office"), which shall—

(1) administer the processes set forth in sections 305 through 307;

(2) implement programs for the Senate to heighten awareness of employee rights in order to prevent violations from occurring.

(b) DIRECTOR.—

(1) IN GENERAL.—The Office shall be headed by a Director (referred to in this title as the "Director") who shall be appointed by the President pro tempore, upon the recommendation of the Majority Leader in consultation with the Minority Leader. The appointment shall be made without regard to political affiliation and solely on the basis of fitness to perform the duties of the position. The Director shall be appointed for a term of service which shall expire at the end of the Congress following the Congress during which the Director is appointed. A Director may be reappointed at the termination of any term of service. The President pro tempore, upon the joint recommendation of the Majority Leader in consultation with the Minority Leader, may remove the Director at any time.

(2) SALARY.—The President pro tempore, upon the recommendation of the Majority Leader in consultation with the Minority Leader, shall establish the rate of pay for the Director. The salary of the Director may not be reduced during the employment of the Director and shall be increased at the same time and in the same manner as fixed statutory salary rates within the Senate are adjusted as a result of annual comparability increases.

(3) ANNUAL BUDGET.—The Director shall submit an annual budget request for the Office to the Committee on Appropriations.

(4) APPOINTMENT OF DIRECTOR.—The first Director shall be appointed and begin service within 90 days after the date of enactment of this Act, and thereafter the Director shall be appointed and begin service within 30 days after the beginning of the session of the Congress immediately following the termination of a Director's term of service or within 60 days after a vacancy occurs in the position.

(c) STAFF OF THE OFFICE.—

(1) APPOINTMENT.—The Director may appoint and fix the compensation of such additional staff, including hearing officers, as are necessary to carry out the purposes of this title.

(2) DETAILEES.—The Director may, with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, use on a reimbursable or nonreimbursable basis the services of any such department or agency, including the services of members or personnel of the General Accounting Office Personnel Appeals Board.

(3) CONSULTANTS.—In carrying out the functions of the Office, the Director may procure the temporary (not to exceed 1 year) or intermittent services of individual consultants, or organizations thereof, in the same manner and under the same conditions as a standing committee of the Senate may procure such services under section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i)).

(d) EXPENSES OF THE OFFICE.—In fiscal year 1992, the expenses of the Office shall be paid out of the Contingent Fund of the Senate from the appropriation account Miscellaneous Items. Beginning in fiscal year 1993, and for each fiscal year thereafter, there is authorized to be appropriated for the expenses of the Office such sums as shall be necessary to carry out its functions. In all cases, expenses shall be paid out of the Contingent Fund of the Senate upon vouchers approved

by the Director, except that a voucher shall not be required for—

(1) the disbursement of salaries of employees who are paid at an annual rate;

(2) the payment of expenses for telecommunications services provided by the Telecommunications Department, Sergeant at Arms, United States Senate;

(3) the payment of expenses for stationery supplies purchased through the Keeper of the Stationery, United States Senate;

(4) the payment of expenses for postage to the Postmaster, United States Senate; and

(5) the payment of metered charges on copying equipment provided by the Sergeant at Arms, United States Senate.

The Secretary of the Senate is authorized to advance such sums as may be necessary to defray the expenses incurred in carrying out this title. Expenses of the Office shall include authorized travel for personnel of the Office.

(e) RULES OF THE OFFICE.—The Director shall adopt rules governing the procedures of the Office, including the procedures of hearing boards, which rules shall be submitted to the President pro tempore for publication in the Congressional Record. The rules may be amended in the same manner. The Director may consult with the Chairman of the Administrative Conference of the United States on the adoption of rules.

(f) REPRESENTATION BY THE SENATE LEGAL COUNSEL.—For the purpose of representation by the Senate Legal Counsel, the Office shall be deemed a committee, within the meaning of title VII of the Ethics in Government Act of 1978 (2 U.S.C. 288, et seq.).

SEC. 304. SENATE PROCEDURE FOR CONSIDERATION OF ALLEGED VIOLATIONS.

The Senate procedure for consideration of alleged violations consists of 4 steps as follows:

(1) Step I, counseling, as set forth in section 305.

(2) Step II, mediation, as set forth in section 306.

(3) Step III, formal complaint and hearing by a hearing board, as set forth in section 307.

(4) Step IV, review of a hearing board decision, as set forth in section 308 or 309.

SEC. 305. STEP I: COUNSELING.

(a) IN GENERAL.—A Senate employee alleging a violation may request counseling by the Office. The Office shall provide the employee with all relevant information with respect to the rights of the employee. A request for counseling shall be made not later than 180 days after the alleged violation forming the basis of the request for counseling occurred. No request for counseling may be made until 10 days after the first Director begins service pursuant to section 303(b)(4).

(b) PERIOD OF COUNSELING.—The period for counseling shall be 30 days unless the employee and the Office agree to reduce the period. The period shall begin on the date the request for counseling is received.

(c) EMPLOYEES OF THE ARCHITECT OF THE CAPITOL AND CAPITOL POLICE.—In the case of an employee of the Architect of the Capitol or an employee who is a member of the Capitol Police, the Director may refer the employee to the Architect of the Capitol or the Capitol Police Board for resolution of the employee's complaint through the internal grievance procedures of the Architect of the Capitol or the Capitol Police Board for a specific period of time, which shall not count against the time available for counseling or mediation under this title.

SEC. 306. STEP II: MEDIATION.

(a) IN GENERAL.—Not later than 15 days after the end of the counseling period, the employee may file a request for mediation with the Office. Mediation may include the Office, the employee, and the employing office in a process involving meetings with the parties separately or jointly for the purpose of resolving the dispute between the employee and the employing office.

(b) MEDIATION PERIOD.—The mediation period shall be 30 days beginning on the date the request for mediation is received and may be extended for an additional 30 days at the discretion of the Office. The Office shall notify the employee and the head of the employing office when the mediation period has ended.

SEC. 307. STEP III: FORMAL COMPLAINT AND HEARING.

(a) FORMAL COMPLAINT AND REQUEST FOR HEARING.—Not later than 30 days after receipt by the employee of notice from the Office of the end of the mediation period, the Senate employee may file a formal complaint with the Office. No complaint may be filed unless the employee has made a timely request for counseling and has completed the procedures set forth in sections 305 and 306.

(b) HEARING BOARD.—A board of 3 independent hearing officers (referred to in this title as "hearing board"), who are not Senators or officers or employees of the Senate, chosen by the Director (one of whom shall be designated by the Director as the presiding hearing officer) shall be assigned to consider each complaint filed under this section. The Director shall appoint hearing officers after considering any candidates who are recommended to the Director by the Federal Mediation and Conciliation Service, the Administrative Conference of the United States, or organizations composed primarily of individuals experienced in adjudicating or arbitrating personnel matters. A hearing board shall act by majority vote.

(c) DISMISSAL OF FRIVOLOUS CLAIMS.—Prior to a hearing under subsection (d), a hearing board may dismiss any claim that it finds to be frivolous.

(d) HEARING.—A hearing shall be conducted—

(1) in closed session on the record by a hearing board;

(2) no later than 30 days after filing of the complaint under subsection (a), except that the Office may, for good cause, extend up to an additional 60 days the time for conducting a hearing; and

(3) except as specifically provided in this title and to the greatest extent practicable, in accordance with the principles and procedures set forth in sections 554 through 557 of title 5, United States Code.

(e) DISCOVERY.—Reasonable prehearing discovery may be permitted at the discretion of the hearing board.

(f) SUBPOENA.—

(1) AUTHORIZATION.—A hearing board may authorize subpoenas, which shall be issued by the presiding hearing officer on behalf of the hearing board, for the attendance of witnesses at proceedings of the hearing board and for the production of correspondence, books, papers, documents, and other records.

(2) OBJECTIONS.—If a witness refuses, on the basis of relevance, privilege, or other objection, to testify in response to a question or to produce records in connection with the proceedings of a hearing board, the hearing board shall rule on the objection. At the request of the witness, the employee, or employing office, or on its own initiative, the hearing board may refer the objection to the Select Committee on Ethics for a ruling.

(3) ENFORCEMENT.—The Select Committee on Ethics may make to the Senate any recommendations by report or resolution, including recommendations for criminal or civil enforcement by or on behalf of the Office, which the Select Committee on Ethics may consider appropriate with respect to—

(A) the failure or refusal of any person to appear in proceedings under this or to produce records in obedience to a subpoena or order of the hearing board; or

(B) the failure or refusal of any person to answer questions during his or her appearance as a witness in a proceeding under this section.

For purposes of section 1365 of title 28, United States Code, the Office shall be deemed to be a committee of the Senate.

(g) DECISION.—The hearing board shall issue a written decision as expeditiously as possible, but in no case more than 45 days after the conclusion of the hearing. The written decision shall be transmitted by the Office to the employee and the employing office. The decision shall state the issues raised by the complaint, describe the evidence in the record, and contain a determination as to whether a violation has occurred.

(h) REMEDIES.—If the hearing board determines that a violation has occurred, it shall order such remedies as would be appropriate if awarded under section 706 (g) and (k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5 (g) and (k)), and may also order the award of such compensatory damages as would be appropriate if awarded under section 1977 and section 1977A (a) and (b)(2) of the Revised Statutes (42 U.S.C. 1981 and 1981A (a) and (b)(2)). In the case of a determination that a violation based on age has occurred, the hearing board shall order such remedies as would be appropriate if awarded under section 15(c) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(c)). Any order requiring the payment of money must be approved by a Senate resolution reported by the Committee on Rules and Administration. The hearing board shall have no authority to award punitive damages.

(i) PRECEDENT AND INTERPRETATIONS.—Hearing boards shall be guided by judicial decisions under statutes referred to in section 302 and subsection (h) of this section, as well as the precedents developed by the Select Committee on Ethics under section 308, and other Senate precedents.

SEC. 308. REVIEW BY THE SELECT COMMITTEE ON ETHICS.

(a) IN GENERAL.—An employee or the head of an employing office may request that the Select Committee on Ethics (referred to in this section as the "Committee"), or such other entity as the Senate may designate, review a decision under section 307, including any decision following a remand under subsection (c), by filing a request for review with the Office not later than 10 days after the receipt of the decision of a hearing board. The Office, at the discretion of the Director, on its own initiative and for good cause, may file a request for review by the Committee of a decision of a hearing board not later than 5 days after the time for the employee or employing office to file a request for review has expired. The Office shall transmit a copy of any request for review to the Committee and notify the interested parties of the filing of the request for review.

(b) REVIEW.—Review under this section shall be based on the record of the hearing board. The Committee shall adopt and publish in the Congressional Record procedures for requests for review under this section.

(c) REMAND.—Within the time for a decision under subsection (d), the Committee

may remand a decision no more than one time to the hearing board for the purpose of supplementing the record or for further consideration.

(d) FINAL DECISION.—

(1) HEARING BOARD.—If no timely request for review is filed under subsection (a), the Office shall enter as a final decision, the decision of the hearing board.

(2) SELECT COMMITTEE ON ETHICS.—

(A) If the Committee does not remand under subsection (c), it shall transmit a written final decision to the Office for entry in the records of the Office. The Committee shall transmit the decision not later than 60 calendar days during which the Senate is in session after the filing of a request for review under subsection (a). The Committee may extend for 15 calendar days during which the Senate is in session the period for transmission to the Office of a final decision.

(B) The decision of the hearing board shall be deemed to be a final decision, and entered in the records of the Office as a final decision, unless a majority of the Committee votes to reverse or remand the decision of the hearing board within the time for transmission to the Office of a final decision.

(C) The decision of the hearing board shall be deemed to be a final decision, and entered in the records of the Office as a final decision, if the Committee, in its discretion, decides not to review, pursuant to a request for review under subsection (a), a decision of the hearing board, and notifies the interested parties of such decision.

(3) ENTRY OF A FINAL DECISION.—The entry of a final decision in the records of the Office shall constitute a final decision for purposes of judicial review under section 309.

(e) STATEMENT OF REASONS.—Any decision of the Committee under subsection (c) or subsection (d)(2)(A) shall contain a written statement of the reasons for the Committee's decision.

SEC. 309. JUDICIAL REVIEW.

(a) IN GENERAL.—Any Senate employee aggrieved by a final decision under section 308(d), or any Member of the Senate who would be required to reimburse the appropriate Federal account pursuant to the section entitled "Payments by the President or a Member of the Senate" and a final decision entered pursuant to section 308(d)(2)(B), may petition for review by the United States Court of Appeals for the Federal Circuit.

(b) LAW APPLICABLE.—Chapter 158 of title 28, United States Code, shall apply to a review under this section except that—

(1) with respect to section 2344 of title 28, United States Code, service of the petition shall be on the Senate Legal Counsel rather than on the Attorney General;

(2) the provisions of section 2348 of title 28, United States Code, on the authority of the Attorney General, shall not apply;

(3) the petition for review shall be filed not later than 90 days after the entry in the Office of a final decision under section 308(d);

(4) the Office shall be an "agency" as that term is used in chapter 158 of title 28, United States Code; and

(5) the Office shall be the respondent in any proceeding under this section.

(c) STANDARD OF REVIEW.—To the extent necessary to decision and when presented, the court shall decide all relevant questions of law and interpret constitutional and statutory provisions. The court shall set aside a final decision if it is determined that the decision was—

(1) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;

(2) not made consistent with required procedures; or

(3) unsupported by substantial evidence.

In making the foregoing determinations, the court shall review the whole record, or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error. The record on review shall include the record before the hearing board, the decision of the hearing board, and the decision, if any, of the Select Committee on Ethics.

(d) ATTORNEY'S FEES.—If an employee is the prevailing party in a proceeding under this section, attorney's fees may be allowed by the court in accordance with the standards prescribed under section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(k)).

SEC. 310. RESOLUTION OF COMPLAINT.

If, after a formal complaint is filed under section 307, the employee and the head of the employing office resolve the issues involved, the employee may dismiss the complaint or the parties may enter into a written agreement, subject to the approval of the Director.

SEC. 311. COSTS OF ATTENDING HEARINGS.

Subject to the approval of the Director, an employee with respect to whom a hearing is held under this title may be reimbursed for actual and reasonable costs of attending proceedings under sections 307 and 308, consistent with Senate travel regulations. Senate Resolution 259, agreed to August 5, 1987 (100th Congress, 1st Session), shall apply to witnesses appearing in proceedings before a hearing board.

SEC. 312. PROHIBITION OF INTIMIDATION.

Any intimidation of, or reprisal against, any employee by any Member, officer, or employee of the Senate, or by the Architect of the Capitol, or anyone employed by the Architect of the Capitol, as the case may be, because of the exercise of a right under this title constitutes an unlawful employment practice, which may be remedied in the same manner under this title as is a violation.

SEC. 313. CONFIDENTIALITY.

(a) COUNSELING.—All counseling shall be strictly confidential except that the Office and the employee may agree to notify the head of the employing office of the allegations.

(b) MEDIATION.—All mediation shall be strictly confidential.

(c) HEARINGS.—Except as provided in subsection (d), the hearings, deliberations, and decisions of the hearing board and the Select Committee on Ethics shall be confidential.

(d) FINAL DECISION OF SELECT COMMITTEE ON ETHICS.—The final decision of the Select Committee on Ethics under section 308 shall be made public if the decision is in favor of the complaining Senate employee or if the decision reverses a decision of the hearing board which had been in favor of the employee. The Select Committee on Ethics may decide to release any other decision at its discretion. In the absence of a proceeding under section 308, a decision of the hearing board that is favorable to the employee shall be made public.

(e) RELEASE OF RECORDS FOR JUDICIAL REVIEW.—The records and decisions of hearing boards, and the decisions of the Select Committee on Ethics, may be made public if required for the purpose of judicial review under section 309.

SEC. 314. EXERCISE OF RULEMAKING POWER.

The provisions of this title, except for sections 309, 320, 321, and 322, are enacted by the Senate as an exercise of the rulemaking power of the Senate, with full recognition of the right of the Senate to change its rules, in the same manner, and to the same extent, as in the case of any other rule of the Senate. Notwithstanding any other provision of law, except as provided in section 309, enforcement and adjudication with respect to the discriminatory practices prohibited by section 302, and arising out of Senate employment, shall be within the exclusive jurisdiction of the United States Senate.

SEC. 315. TECHNICAL AND CONFORMING AMENDMENTS.

Section 509 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12209) is amended—

(1) in subsection (a)—

(A) by striking paragraphs (2) through (5);

(B) by redesignating paragraphs (6) and (7) as paragraphs (2) and (3), respectively; and

(C) in paragraph (3), as redesignated by subparagraph (B) of this paragraph—

(i) by striking "(2) and (6)(A)" and inserting "(2)(A)", as redesignated by subparagraph (B) of this paragraph; and

(ii) by striking "(3), (4), (5), (6)(B), and (6)(C)" and inserting "(2)"; and

(2) in subsection (c)(2), by inserting ", except for the employees who are defined as Senate employees, in section 201(c)(1) of the Civil Rights Act of 1991)" after "shall apply exclusively".

SEC. 316. POLITICAL AFFILIATION AND PLACE OF RESIDENCE.

(a) IN GENERAL.—It shall not be a violation with respect to an employee described in subsection (b) to consider the—

(1) party affiliation;

(2) domicile; or

(3) political compatibility with the employing office,

of such an employee with respect to employment decisions.

(b) DEFINITION.—For purposes of this section, the term "employee" means—

(1) an employee on the staff of the Senate leadership;

(2) an employee on the staff of a committee or subcommittee;

(3) an employee on the staff of a Member of the Senate;

(4) an officer or employee of the Senate elected by the Senate or appointed by a Member, other than those described in paragraphs (1) through (3); or

(5) an applicant for a position that is to be occupied by an individual described in paragraphs (1) through (4).

SEC. 317. OTHER REVIEW.

No Senate employee may commence a judicial proceeding to redress discriminatory practices prohibited under section 302 of this title, except as provided in this title.

SEC. 318. OTHER INSTRUMENTALITIES OF THE CONGRESS.

It is the sense of the Senate that legislation should be enacted to provide the same or comparable rights and remedies as are provided under this title to employees of instrumentalities of the Congress not provided with such rights and remedies.

SEC. 319. RULE XLII OF THE STANDING RULES OF THE SENATE.

(a) REAFFIRMATION.—The Senate reaffirms its commitment to Rule XLII of the Standing Rules of the Senate, which provides as follows:

"No Member, officer, or employee of the Senate shall, with respect to employment by the Senate or any office thereof—

"(a) fail or refuse to hire an individual;

"(b) discharge an individual; or

"(c) otherwise discriminate against an individual with respect to promotion, compensation, or terms, conditions, or privileges of employment

on the basis of such individual's race, color, religion, sex, national origin, age, or state of physical handicap.".

(b) AUTHORITY TO DISCIPLINE.—Notwithstanding any provision of this title, including any provision authorizing orders for remedies to Senate employees to redress employment discrimination, the Select Committee on Ethics shall retain full power, in accordance with its authority under Senate Resolution 338, 88th Congress, as amended, with respect to disciplinary action against a Member, officer, or employee of the Senate for a violation of Rule XLII.

SEC. 320. COVERAGE OF PRESIDENTIAL APPOINTEES.

(a) IN GENERAL.—

(1) APPLICATION.—The rights, protections, and remedies provided pursuant to section 302 and 307(h) of this title shall apply with respect to employment of Presidential appointees.

(2) ENFORCEMENT BY ADMINISTRATIVE ACTION.—Any Presidential appointee may file a complaint alleging a violation with the Equal Employment Opportunity Commission, or such other entity as is designated by the President by Executive Order, which, in accordance with the principles and procedures set forth in sections 554 through 557 of title 5, United States Code, shall determine whether a violation has occurred and shall set forth its determination in a final order. If the Equal Employment Opportunity Commission, or such other entity as is designated by the President pursuant to this section, determines that a violation has occurred, the final order shall also provide for appropriate relief.

(3) JUDICIAL REVIEW.—

(A) IN GENERAL.—Any party aggrieved by a final order under paragraph (2) may petition for review by the United States Court of Appeals for the Federal Circuit.

(B) LAW APPLICABLE.—Chapter 158 of title 28, United States Code, shall apply to a review under this section except that the Equal Employment Opportunity Commission or such other entity as the President may designate under paragraph (2) shall be an "agency" as that term is used in chapter 158 of title 28, United States Code.

(C) STANDARD OF REVIEW.—To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law and interpret constitutional and statutory provisions. The court shall set aside a final order under paragraph (2) if it is determined that the order was—

(i) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;

(ii) not made consistent with required procedures; or

(iii) unsupported by substantial evidence.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(D) ATTORNEY'S FEES.—If the presidential appointee is the prevailing party in a proceeding under this section, attorney's fees may be allowed by the court in accordance with the standards prescribed under section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(k)).

(b) PRESIDENTIAL APPOINTEE.—For purposes of this section, the term "Presidential appointee" means any officer or employee, or an applicant seeking to become an officer or employee, in any unit of the Executive Branch, including the Executive Office of the President, whether appointed by the President or by any other appointing authority in the Executive Branch, who is not already entitled to bring an action under any of the statutes referred to in section 302 but does not include any individual—

(1) whose appointment is made by and with the advice and consent of the Senate;

(2) who is appointed to an advisory committee, as defined in section 3(2) of the Federal Advisory Committee Act (5 U.S.C. App.); or

(3) who is a member of the uniformed services.

SEC. 321. COVERAGE OF PREVIOUSLY EXEMPT STATE EMPLOYEES.

(a) APPLICATION.—The rights, protections, and remedies provided pursuant to section 302 and 307(h) of this title shall apply with respect to employment of any individual chosen or appointed, by a person elected to public office in any State or political subdivision of any State by the qualified voters thereof—

(1) to be a member of the elected official's personal staff;

(2) to serve the elected official on the policymaking level; or

(3) to serve the elected official as an immediate advisor with respect to the exercise of the constitutional or legal powers of the office.

(b) ENFORCEMENT BY ADMINISTRATIVE ACTION.—Any individual referred to in subsection (a) may file a complaint alleging a violation with the Equal Employment Opportunity Commission, which, in accordance with the principles and procedures set forth in sections 554 through 557 of title 5, United States Code, shall determine whether a violation has occurred and shall set forth its determination in a final order. If the Equal Employment Opportunity Commission determines that a violation has occurred, the final order shall also provide for appropriate relief.

(c) JUDICIAL REVIEW.—Any party aggrieved by a final order under subsection (b) may obtain a review of such order under chapter 158 of title 28, United States Code. For the purpose of this review, the Equal Employment Opportunity Commission shall be an "agency" as that term is used in chapter 158 of title 28, United States Code.

(d) STANDARD OF REVIEW.—To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law and interpret constitutional and statutory provisions. The court shall set aside a final order under subsection (b) if it is determined that the order was—

(1) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;

(2) not made consistent with required procedures; or

(3) unsupported by substantial evidence.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(e) ATTORNEY'S FEES.—If the individual referred to in subsection (a) is the prevailing party in a proceeding under this subsection, attorney's fees may be allowed by the court in accordance with the standards prescribed under section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(k)).

SEC. 322. SEVERABILITY.

Notwithstanding section 401 of this Act, if any provision of section 309 or 320(a)(3) is invalidated, both sections 309 and 320(a)(3) shall have no force and effect.

SEC. 323. PAYMENTS BY THE PRESIDENT OR A MEMBER OF THE SENATE.

The President or a Member of the Senate shall reimburse the appropriate Federal account for any payment made on his or her behalf out of such account for an unfair employment practice judgment committed under the provisions of this title by the President or Member of the Senate not later than 60 days after the payment is made.

SEC. 324. REPORTS OF SENATE COMMITTEES.

(a) Each report accompanying a bill or joint resolution of a public character reported by any committee of the Senate (except the Committee on Appropriations and the Committee on the Budget) shall contain a listing of the provisions of the bill or joint resolution that apply to Congress and an evaluation of the impact of such provisions on Congress.

(b) The provisions of this section are enacted by the Senate as an exercise of the rulemaking power of the Senate, with full recognition of the right of the Senate to change its rules, in the same manner, and to the same extent, as in the case of any other rule of the Senate.

SEC. 325. INTERVENTION AND EXPEDITED REVIEW OF CERTAIN APPEALS.

(a) INTERVENTION.—Because of the constitutional issues that may be raised by section 309 and section 320, any Member of the Senate may intervene as a matter of right in any proceeding under section 309 for the sole purpose of determining the constitutionality of such section.

(b) THRESHOLD MATTER.—In any proceeding under section 309 or section 320, the United States Court of Appeals for the Federal Circuit shall determine any issue presented concerning the constitutionality of such section as a threshold matter.

(c) APPEAL.—

(1) IN GENERAL.—An appeal may by taken directly to the Supreme Court of the United States from any interlocutory or final judgment, decree, or order issued by the United States Court of Appeals for the Federal Circuit ruling upon the constitutionality of section 309 or 320.

(2) JURISDICTION.—The Supreme Court shall, if it has not previously ruled on the question, accept jurisdiction over the appeal referred to in paragraph (1), advance the appeal on the docket and expedite the appeal to the greatest extent possible.

TITLE IV—GENERAL PROVISIONS

SEC. 401. SEVERABILITY.

If any provision of this Act, or an amendment made by this Act, or the application of such provision to any person or circumstances is held to be invalid, the remainder of this Act and the amendments made by this Act, and the application of such provision to other persons and circumstances, shall not be affected.

SEC. 402. EFFECTIVE DATE.

Except as otherwise specifically provided, this Act and the amendments made by this Act shall take effect upon enactment.

TITLE V—CIVIL WAR SITES ADVISORY COMMISSION

SEC. 501. CIVIL WAR SITES ADVISORY COMMISSION.

Section 1205 of Public Law 101-628 is amended in subsection (a) by—

(1) striking "Three" in paragraph (4) and inserting "Four" in lieu thereof; and

(2) striking "Three" in paragraph (5) and inserting "Four" in lieu thereof.

Mr. KENNEDY. Mr. President, I move to reconsider the vote.

Mr. MITCHELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ENFORCEMENT OF OILSEEDS GATT PANEL RULING

The PRESIDING OFFICER. Under the previous order, the Finance Committee is discharged from further consideration of Senate Resolution 201.

The clerk will state the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 201) to express the sense of the Senate regarding enforcement of the oilseeds GATT panel ruling against the European Community.

The PRESIDING OFFICER. Pursuant to the previous order, the Senate will proceed to its immediate consideration.

The Senator from Missouri is recognized.

Mr. DANFORTH. Mr. President, this is a sense-of-the-Senate resolution. Its purpose is to urge the administration to pursue the legal remedies available to our country under section 301 of the Trade Act. The facts are, in brief, as follows:

In December 1987, the American Soybean Association filed a 301 petition with the U.S. Trade Representative relating to subsidies on oilseeds and animal feed proteins by the European Community.

In December 1989, the GATT dispute settlement panel found in favor of the Soybean Association against the European Community.

In June 1991, the European Community Council of Ministers agreed that by October 31, 1991, it would comply with the GATT finding. However, the Commission of the European Community the following month announced a program of subsidies which would be approximately twice the world market price for oil seeds.

And therefore this sense-of-the-Senate resolution provides that if by October 31, 1991 the European Community Council of Ministers has not adopted a new oilseeds regime that is fully in conformity with its GATT obligations, the United States Trade Representative should immediately take action under section 301 to compensate for the trade losses caused by the European Community's failure to comply with the GATT panel ruling; and that the actions taken by the USTR should remain in full force and effect until such time as the European Community brings its oilseeds regime into conformity with its GATT obligations.

Mr. GRASSLEY. Mr. President, farmers are tired with the European Community's stonewalling on the reform of their oilseeds regime. Even before the GATT ruling in 1989, stating that the EC program violated international trade rules, the EC had continued to tell our representatives that a new system would be implemented soon. In fact, I do not believe that any neutral observer would be convinced that the EC has made a good faith effort to reform their oilseeds regime.

I am pleased to be a cosponsor of this resolution. It appears that Iowa may be the Nation's leader in the production of soybeans this year, which is America's most utilized oilseed. Exports are an important component of the price received by soybean farmers, and the EC's $12 billion export war chest easily dwarfs the $1 billion the United States is able to tap into for export assistance.

The EC has recently made moves to alter their Oilseeds Program. However, alter is a long way from reform. The changes they would make would likely result in paying EC farmers twice the world price for oilseeds. Clearly, this market-distorting plan will continue to encourage the overproduction and export of oilseeds and their byproducts. Right now, the EC program costs U.S. producers on the order of $2 billion a year in lost sales. This program is illegal, it should be abandoned immediately, and this resolution is an appropriate way for the United States to speak to this issue.

Mr. BAUCUS. Mr. President, I rise in strong support of this resolution.

EC oilseed subsidies are one manifestation of the EC's broad system of agricultural subsidies. Unfortunately, EC action in the oilseed sector is symptomatic of intransigence that threatens to undermine the Uruguay round of GATT negotiations.

In December 1989, a GATT dispute resolution panel directed the EC to reform its Oilseed Subsidy Program. The EC accepted this panel ruling in January 1990. Despite accepting the panel decision, the EC has done little to implement its international obligations.

The United States can no longer afford to tolerate EC footdragging. EC subsidies to oilseed producers will cost American farmers at least $2 billion a year in lost sales. This monetary loss translates directly into lost jobs.

U.S. credibility is at stake in our continuing dispute with the EC over oilseed subsidies. The EC promised last summer to reform its oilseed subsidy program by October 31, 1991. However, an EC plan to implement this promise continues to provide an unacceptable level of subsidization.

It is time for the Congress to send Europe a strong message: Either the EC lives up to its multilateral obligations and reforms its oilseed subsidies, or the United States takes unilateral action under section 301.

Mr. DANFORTH. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays have already been ordered on this resolution.

Mr. DANFORTH. Mr. President, I yield a minute to the Senator from Missouri.

Mr. BOND. Mr. President, I thank my colleague.

Mr. President, I rise in strong support of the resolution offered by my distinguished colleague from Missouri, Senator DANFORTH, and Senator PRYOR and others. This resolution expresses the sense of the Senate regarding enforcement of the oilseeds GATT panel ruling against the European Community.

Mr. President, I would like to stand up here today and tell you that everything is just fine with the American Soybean industry, but frankly, it is not. Plain and simple: The Europeans continue to drag their feet on reform of their oilseed regime. The EC's proposal to reform its oilseed subsidy system falls short of instituting any meaningful reforms.

While the European Community [EC] has expanded its oilseed exports, U.S. exports have fallen, domestic stocks have risen and prices for both oilseeds and oil have dropped. The ability of the EC to produce and export oilseeds is entirely dependent on subsidies. It is time the administration recognize that the EC has no intention of complying with its GATT commitments to reform its GATT illegal oilseed subsidy regime. It is clear to me and the Nation's soybean farmers that nothing less than certain retaliation against EC exports to the United States will convince the EC that the United States is completely serious. We will accept nothing less than the EC reforming its oilseed subsidy regime as it is required to do as a GATT signatory.

As the resolution indicates, the American Soybean Association [ASA] representing all U.S. soybean farmers, filed a section 301 petition against the EC in December 1987. The petition charged that the EC was impairing its duty-free bindings on soybeans and soybean meal by providing lucrative subsidies to growers and processors of EC-origin soybeans, rapeseed, and sunflower seed. The ASA petition was accepted by the Reagan administration in January 1988 and actively pursued through the GATT and in consultations with the EC.

In January 1989 the GATT Council of Ministers adopted a report of a dispute settlement panel that had considered the merits of the charges contained in the American Soybean Association's section 301 petition. The GATT Dispute Settlement Panel ruled that EC subsidies are a violation of GATT trading rules. As my colleague from Missouri pointed out, the EC accepted the results of the dispute settlement panel when it was presented to the GATT Council in January 1989. In so doing the EC agreed to bring its oilseed regime into compliance with the GATT and to eliminate the impairment of its

duty-free bindings. Tomorrow will be October 31, 1991, Halloween, and the EC continues to play tricks with their oilseed policies.

Soon, it will be 4 years since the ASA's section 301 petition was filled with USTR and 2 years since the EC's oilseed regime was found to be GATT-Illegal. Yet, the EC has yet to take action to come into compliance. Quite the opposite has occurred in fact. In 1986–87 marketing year, the time when ASA filed its petition, the EC produced a total of 6.9 million metric tons [MMT] of oilseeds. This year, the EC is expected to produce over 12 MMT of oilseeds, the largest crop in its history.

The EC budgeted the equivalent of $9 billion in 1990–91 to pay the cost of its subsidies for the production of oilseeds, protein crops, and olive oil, directly affecting demand in Europe for United States soybeans and soybean meal. That's almost as much as the United States spent in fiscal year 1991 on all domestic farm income and price supports. This year the EC is expected to export well over 1 MMT of highly subsidized rapeseed oil to markets previously supplied with U.S. soybeans and soybean oil.

It is important to consider the extent of the EC's subsidies. Here in the United States we guarantee our soybean farmers $4.92 for each bushel of soybeans they grow and 8½ cents per pound for each pound of sunflower seed and rapeseed they grow. That is below the cost of production for many farmers and well below the normal market price for those crops. In Europe farmers receive the excess of $12 to $15 per bushel for all of their soybeans and almost 20 cents per pound for each pound of rapeseed and sunflower seed they grow. By reimbursing EC oilseed processors for the higher price they must pay EC farmers for oilseeds, the EC is able to sell at a cost lower than the EC processors can purchase U.S. soybeans. United States soybeans and soybean meal simply cannot compete in the European market with EC-origin oilseeds. I ask my colleagues, what would be the reaction from the EC if we adopted their policy for oilseeds and applied it to wine? Without question they would retaliate.

This summer the EC promised U.S. Trade Representative Carla Hills and Secretary of Agriculture Ed Madigan that it would adopt a new Oilseeds Program that complied with the GATT panel's ruling by October 31 of this year. In August the EC's proposed oilseed plan was unveiled. The EC's plan for compliance with the December 1989, GATT panel's ruling merely continues the excessive oilseed subsidies of the past.

Mr. President, I am fed up with the EC's continued uncompromising position on the oilseeds case as well as with just about every other agricultural issue. The EC has had 2 years to make acceptable reforms. In the meantime, U.S. soybean farmers and processors are losing at least $1.5 billion annually in sales to the EC. It is my view that the EC will keep on stealing our soybean farmers' and processors' market in Europe if we do not retaliate.

Our soybean farmers and soybean processors should not have to wait any longer for the EC to act on the oilseeds issue. They have waited far too long already. The way to get ahead of the EC is to get behind the American producer. The administration must retaliate against the EC by taking action under section 301 to impose prohibitive import duties on no less than $1.5 billion in EC exports to the United States. Through such retaliation the United States will make the EC pay an economic price for its failure to make acceptable reforms and provide a reason for the EC to compete fairly. I urge my colleagues to support this resolution.

Mr. FOWLER addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. FOWLER. Mr. President, I yield time to myself.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. FOWLER. Mr. President, I will be uncharacteristically brief. Both Senators from Missouri stated the case for this resolution. They have my support. I hope my colleagues will join in the passage.

Mr. DURENBERGER. Mr. President, I join the distinguished senior Senator from Missouri [Mr. DANFORTH] in urging all of my colleagues to support this resolution affirming our rights under the GATT in relation to the unfair European Community trade subsidy policies as applied to soybeans.

Mr. President, for more than 5 years, the United States has been engaged in on-again, off-again, negotiations with all of the world's major trading nations at the Uruguay round of the GATT. Last December, our trade representatives walked out of the negotiations because the European Community refused to budge on the onerous and distorting agriculture subsidy policies that have cost American farmers billions of dollars in lost sales. At that time, I commended the administration for holding firm against the EC.

But Mr. President, even if we do ultimately achieve a breakthrough at the Uruguay round, the question remains how any commitments under the GATT will be enforced. The history of the oilseeds case clearly demonstrates that the current enforcement regime is unworkable.

Four years ago, the American Soybeans Association filed a section 301 petition charging that the European Community's production and processing subsidies on oilseeds and animal feed proteins were inconsistent with GATT and nullified the EC's duty-free bindings granted to the United States in 1962. After more than a year of fruitless negotiations, the U.S. Trade Representative took the dispute to a GATT Council dispute settlement panel.

In December 1989 the GATT panel found that the EC's oilseeds subsidies violated the GATT. Although the EC accepted the GATT panel ruling and committed to reforming its oilseeds regime, so far the EC has failed to live up to its commitment. The new oilseeds regime proposed by the Commission of the EC continues to provide unacceptably high subsidies for oilseeds, guaranteeing EC producers a return of approximately twice the world market price for oilseeds, and continues to impair the benefit of the duty-free bindings granted to the United States nearly 30 years ago.

Mr. President, it is estimated that the EC's existing oilseeds subsidy policy has cost the U.S. soybean farmer at least $1.5 to $2 billion a year in lost sales. This is intolerable.

This resolution sends a clear and direct signal to the EC, and all of our trading partners. The United States will no longer tolerate endless promises of reform and market access, followed by nothing but empty gestures and the same old subsidy-as-usual policy. We must exercise our rights under the GATT and under section 301 to remedy this fundamental inequity that our soybean farmers continue to face.

Mr. GRASSLEY. Mr. President, farmers are tired with the European Community's stonewalling on the reform of their oilseeds regime. Even before the GATT ruling in 1989, stating that the EC program violated international trade rules, the EC has continued to tell our representatives that a new system would be implemented soon. In fact, I do not believe that any neutral observer would be convinced that the EC has made a good faith effort to reform their oilseeds regime.

I am pleased to be a cosponsor of this resolution. It appears that Iowa may be the Nation's leader in the production of soybeans this year, which is America's most utilized oilseed. Exports are an important component of the price received by soybean farmers, and the EC's $12 billion export war chest easily dwarfs the $1 billion the United States is able to tap into for export assistance.

The EC has recently made moves to alter their oilseeds program. However, alter is a long way from reform. The changes they would make would likely result in paying EC farmers twice the world price for oilseeds. Clearly, this market-distorting plan will continue to encourage the overproduction and export of oilseeds and their byproducts. Right now, the EC program costs U.S. producers on the order of $2 billion a year in lost sales. This program is illegal, it should be abandoned imme-

diately, and this resolution is an appropriate way for the United States to speak to this issue.

Mr. WELLSTONE. Mr. President, I join as cosponsor to this resolution out of a determination to ensure that trade agreements serve their intended purpose: To bring nations into compliance with rules of free and fair trade, and to end damaging, trade-distorting practices, especially in the agricultural realm.

On the eve of what some say may be breakthroughs in Uruguay round agricultural trade negotiations under the auspices of GATT, I want to express my commitment to seeing that U.S. agricultural producers are not harmed by other countries' noncompliance with present GATT rules, nor by deals cut in ongoing negotiations which will leave our producers at an unfair competitive disadvantage.

The facts in this oilseeds case are quite clear. I joined many of my colleagues last April in writing to the President on the matter. Although the European Community has altered its oilseeds policy, the Community still is not in compliance with its GATT obligations.

Minnesota is the No. 3 soybean producing State in the country. Oil crop sales generate about $1 billion in annual sales for Minnesota producers. I want to send a clear signal that in this sector, as in others, Europe must comply with GATT panel rulings. I also want to send a signal that this Senate is paying close attention to agricultural trade matters, and will not stand for measures that harm our producers.

The PRESIDING OFFICER. Who yields time?

Mr. DANFORTH. Mr. President, I yield back the remainder of my time.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, I ask unanimous consent that the vote on Senate Resolution 201 occur immediately; that immediately upon disposition of that resolution the Senate proceed to the conference report on H.R. 2686, the Interior appropriation bill; and that the vote on the conference report occur immediately thereafter without any intervening action or debate.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, let me say that there will now be two rollcall votes, one on Senate Resolution 201, to be followed immediately by a vote on the conference report on the Interior appropriations bill. That second vote will be the last rollcall vote this evening. We will then deal with the amendments in disagreement tomorrow.

I have been discussing this with the distinguished chairman of the Appropriations Committee, and following consultation with the Republican leader, I hope to propound a proposed agreement to govern that bill tomorrow, or some portions of that bill, and other matters that will be discussed tomorrow.

VOTE

The PRESIDING OFFICER. The question is on agreeing to Senate Resolution 201. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Iowa [Mr. HARKIN], the Senator from Nebraska [Mr. KERREY], and the Senator from Pennsylvania [Mr. WOFFORD] are necessarily absent.

The result was announced—yeas 97, nays 0, as follows:

[Rollcall Vote No. 239 Leg.]

YEAS—97

Adams	Ford	Mitchell
Akaka	Fowler	Moynihan
Baucus	Garn	Murkowski
Bentsen	Glenn	Nickles
Biden	Gore	Nunn
Bingaman	Gorton	Packwood
Bond	Graham	Pell
Boren	Gramm	Pressler
Bradley	Grassley	Pryor
Breaux	Hatch	Reid
Brown	Hatfield	Riegle
Bryan	Heflin	Robb
Bumpers	Helms	Rockefeller
Burdick	Hollings	Roth
Burns	Inouye	Rudman
Byrd	Jeffords	Sanford
Chafee	Johnston	Sarbanes
Coats	Kassebaum	Sasser
Cochran	Kasten	Seymour
Cohen	Kennedy	Shelby
Conrad	Kerry	Simon
Craig	Kohl	Simpson
Cranston	Lautenberg	Smith
D'Amato	Leahy	Specter
Danforth	Levin	Stevens
Daschle	Lieberman	Symms
DeConcini	Lott	Thurmond
Dixon	Lugar	Wallop
Dodd	Mack	Warner
Dole	McCain	Wellstone
Domenici	McConnell	Wirth
Durenberger	Metzenbaum	
Exon	Mikulski	

NAYS—0

NOT VOTING—3

Harkin	Kerrey	Wofford

So the resolution (S. Res. 201) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 201

Whereas in 1962, the European Community agreed to duty-free bindings on imports of oilseeds and oilcakes, including those exported from the United States;

Whereas in December 1987, the American Soybean Association filed a section 301 petition with the United States Trade Representative charging that the European Community's production and processing subsidies on oilseeds and animal feed proteins were inconsistent with the General Agreement on Tariffs and Trade (GATT), and nullified and impaired the European Community's duty-free bindings granted to the United States in 1962;

Whereas in May 1988, after consultations failed to result in a satisfactory resolution of this dispute, the United States Trade Representative requested the GATT Council of Representatives to establish a dispute settlement panel to consider the matter;

Whereas in July 1988, the United States Trade Representative determined that the rights of the United States under the GATT were being denied by the European Community's oilseeds subsidies;

Whereas in December 1989, the GATT dispute settlement panel found that the European Community's oilseeds subsidies were inconsistent with its GATT obligations regarding national treatment, and nullified and impaired the benefit of the duty-free bindings granted to the United States in 1962;

Whereas in January 1990, the European Community accepted the GATT panel ruling and committed to reforming its oilseeds regime to bring it into conformity with its GATT obligations beginning in the 1991 crop year;

Whereas in June 1991, the European Community Council of Ministers agreed that it would adopt by October 31, 1991, a new oilseeds regime that would bring the European Community into conformity with its GATT obligations;

Whereas the new oilseeds regime proposed by the Commission of the European Community would continue to provide unacceptably high subsidies for oilseeds, guaranteeing European Community producers a return of approximately twice the world market price for oilseeds, and would continue to nullify and impair the benefit of the duty-free bindings granted to the United States in 1962; and

Whereas the European Community's existing oilseeds regime is seriously injuring the United States economy and is estimated to cost United States farm interests at least $2 billion annually in lost sales: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) if by October 31, 1991, the European Community Council of Ministers has not adopted a new oilseeds regime that is fully in conformity with its GATT obligations, the United States Trade Representative should immediately take action under section 301 to compensate for the trade losses caused by the European Community's failure to comply with the GATT panel ruling; and

(2) the actions taken by the United States Trade Representative under section 301 should remain in full force and effect until such time as the European Community brings its oilseeds regime into conformity with its GATT obligations.

Mr. FORD. Mr. President, I ask unanimous consent that I be listed as a cosponsor on Senate Resolution 201.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GORE. Mr. President, I move to reconsider the vote by which the resolution was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, FISCAL YEAR 1992—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the conference report on H.R. 2686 which the clerk will report.

The bill clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the

amendments of the Senate to the bill (H.R. 2686) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1992, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 17, 1991.)

Mr. HATCH. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The President pro tempore is recognized.

Mr. BYRD. I thank the Chair. Mr. President, the Senate will vote shortly on the adoption of the conference report on the Interior appropriations bill. No amendments in disagreement will be taken up this evening. There are one or two or three, I assume, amendments in disagreement. There will be one or more rollcall votes in connection with those amendments in disagreement tomorrow.

I shall put my statement concerning the conference report in the RECORD by unanimous consent and, to accommodate Members, as I have already indicated and as the majority leader has indicated, the vote on the conference report will occur tonight. It has to be voted up or down before we can get to the amendments in disagreement. If it is voted down, we will not get to it. If it is voted up, then we will get to them on tomorrow.

I believe the majority leader has indicated and Senator HELMS has indicated that he will be ready to go on his NEA amendment tomorrow, which he hopes to add to an amendment in disagreement. So there will be no further action on this conference report tonight. However, Senators may stay, if they wish, and talk on the conference report and the amendments. I know of one Senator who will want to do that.

Mr. President, I bring before the Senate today the conference report on H.R. 2686, the fiscal year 1992 Department of the Interior and related agencies appropriation bill.

The allocations for the Interior Subcommittee total $13.102 billion in budget authority and $12.050 billion in outlays. This bill is right at its allocation with respect to outlays, as scored by the Congressional Budget Office. Because of scoring differences between CBO and the Office of Management and Budget on firefighting and various other programs, the conferees have had to report a bill which is substantially below the CBO ceiling for budget authority in order that the bill would comply with the OMB scoring limits.

Mr. President, reaching our outlay target was not an easy task. Despite a series of painful reductions and eliminations of specific projects before the conferees, it was still necessary to include an across-the-board reduction of 1.26 percent in order to stay within the budget authority and outlays allocations.

I repeat that no outlays remain available, so any amendment for additional spending would not be in order under section 602(b) of the Budget Act.

This bill has been the subject of a great deal of scrutiny. Most Members have a direct interest in projects in the bill which affect their States, as well as in policy issues involving public lands, energy, and the arts.

The conferees on this bill met on four different days. Those formal discussions were preceded by 21 days of preconference negotiations. The bill passed by the Senate had 226 numbered amendments that had to be resolved. Moreover, the discrete differences addressed by the conferees totaled some 1,900 items. The conference agreement, by its nature, is a compromise. It will not satisfy all Members in every respect. However, it is time to complete action on this bill.

Given the numerous differences which I have noted, the lengthy period of time which it has taken to bring this conference agreement to the Senate, and the fact that we are already 1 month into the fiscal year, I urge my colleagues to avoid further disagreement with the House and to expedite the transmittal of this fiscal year 1992 Department of the Interior and related agencies appropriation bill to the President.

This Interior bill was difficult to fashion, given the tight budgetary constraints. The 602(b) outlay allocation for the subcommittee is $213 million less than the amount proposed by the President. New outlays in this bill are down some 8.1 percent below the CBO baseline for fiscal year 1992. So, this bill is fiscally responsible.

Mr. President, Senator NICKLES and I have worked well and closely together in protecting the Senate positions during this conference. I believe that the bill represents a bipartisan package. Every member of the Senate expressed an interest in at least one project or program in this bill. There is not enough money available to satisfy all of the more than 3,000 requests received by the Senate subcommittee and the many other requests that were proposed in the House.

I would like to call attention to some items of interest in the conference agreement.

The conferees funded fully the administration's request for presuppression activities related to firefighting on Federal lands, and established new emergency firefighting accounts to deal with the actual emergencies that occur once fires begin to burn. The tragic experience recently in Oakland and Berkeley, CA, brought to the forefront the devastations possible as a result of continued severe drought and pest infestation in the West.

Consistent with the position passed in the Senate by a vote of 60 to 38, no increase in the grazing fee is recommended in this appropriation bill. The managers did include report language encouraging the authorizing committees to take action to resolve this matter and other contentious public lands policy issues.

With respect to the National Endowment for the Arts, the conferees reinforce the directions provided under the authorizing statute for the NEA. These provisions state directly that obscenity is without artistic merit and should not be funded.

Total funding in the bill for land acquisition and State assistance is $321.4 million. This amount is $20.2 million below the fiscal year 1991 appropriation and $28.8 million below the President's request for fiscal year 1992.

Total funding for construction in the Bureau of Land Management, the Fish and Wildlife Service, the Park Service, and the Forest Service, amounts to $680.2 million. This total is $24.7 million above the fiscal year 1991 appropriation for these same construction accounts. So, in total, for land acquisition and construction accounts in these four agencies, we are essentially at last year's level.

Elsewhere, for Indian construction related to education, health clinics, and basic services, the conferees have recommended a total of $484 million, which is an increase of $340.7 million over the budget request.

With respect to other program and policy issues under the jurisdiction of the subcommittee, I offer the following highlights.

All House-passed bill language related to Outer Continental Shelf oil and gas leasing moratoria is retained.

Significant operating increases and facility construction funds are provided to address the most critical health and safety needs for our native American population.

A reduction of nearly $37 million is taken in the timber road construction program. This decrease is about 20 percent below the similarly funded programs last year.

And, lastly, no specific legislative protection is included regarding timber harvest and the spotted owl in the Pacific Northwest. Nor does this bill modify the Endangered Species Act in any way.

Mr. President, I would also like at this point to clarify or correct several items addressed in the Statement of the Managers.

With respect to Indian programs in the Bureau of Indian Affairs, on page 46 of the statement contained in House

report 102–256, the managers outlined the program for new Indian school construction. In the printing of the statement, under item No. 1, the fiscal year is omitted. The statement should reference the fiscal year 1992 priority list.

The managers agreed to provide $12,500,000 in essential tribal services. On page 42 of the statement, the managers discuss that tribes receiving restorations of $100,000 or more of fiscal year 1991 add-ons are not eligible for the essential tribal services money provided in fiscal year 1992. The intention of the managers is not to treat tribes receiving restorations differently than tribes whose fiscal year 1991 add-ons were continued in the President's fiscal year 1992 request. Thus, the managers intend that tribes retaining $100,000 or more of fiscal year 1991 add-ons, whether through the fiscal year 1992 budget request or congressional restoration, would not be eligible for essential tribal services funding in fiscal year 1992.

With respect to the land acquisition program of the Bureau of Land Management, the Statement of the Managers, on page 13, mistakenly, identifies an allowance of $750,000 for a Central Pacific Railroad parcel in Utah. Those funds are actually for the Central Valley Wetlands in California. No funds were provided in this bill for the former project.

Also, in the Forest Service land acquisition program, an amount of $3,499,000 is included for the Toiyabe National Forest. Of that amount, $1,000,000 is intended for the purchase of the fiberboard parcel and it would be my hope that the Congress will complete the purchase of the other parcel; Hope Valley, next year.

The managers have included no funds in the National Park Service construction account for the planning of the Denali southside visitor facilities because the Service has provided information indicating that the environmental impact statement associated with this project will not be completed in fiscal year 1992. This environmental impact statement is to be completed, within available funds, as expeditiously as possible and in no case later than November 1, 1992. The Service is expected to provide the Committees on Appropriations with a quarterly progress report on the efforts to complete the environmental impact statement for the southside visitor facilities.

Also in the National Park Service construction account, the conference agreement includes funding for several projects which, although not owned by the Park Service, are to be accomplished using the Secretary's authorities under the Historic Sites Act of 1935. Among others these projects include: Lane and Fisk Colleges, Montpelier, the New Jersey Urban History Project, Penn Center, and Kennicott. By including funding for these specific projects in this appropriation bill, the Congress has determined that these projects, all of which are on the National Register of Historic Places, are nationally significant properties.

Mr. President, I would like to clarify that the general reduction of $1,625,000 proposed for Fish and Wildlife Service research in the conference agreement should be applied on a pro rata basis to all projects or activities within the $85,588,000 provided for research.

Elsewhere, the Statement of the Managers on page 76 under item 7 reiterates the requirement for a December 1, 1991, report related the a generic heat exchanger facility. That report should be provided in the form of a public assessment document which should be made generally available.

Mr. President, in closing I would like to note that it has been my pleasure to work with Senator NICKLES throughout this appropriations cycle and especially in negotiating with the House conferees on the conference report before the Senate today. This is our first year working together as a team on the Interior bill and I appreciate the insights and help that Senator NICKLES has offered as the ranking member. In addition to this being Senator NICKLES' first time through as a manager of the Interior bill, this was also the first year on the Appropriations Committee for his staff, Cherie Cooper, and I commend both of them for their efforts and thoroughness.

In summary, Mr. President, I am not entirely happy with the conference agreement as modified by the House and sent to the Senate. But it is time to send this bill to the President. Any further disagreement with the proposals before us now will only further delay this important bill. Such disagreement may open the bill to even further disagreements in the House. For example, the grazing issue conceivably could be revived in the House if we return an amendment in disagreement.

Mr. President, one of the modifications adopted by the House affected the Hardwoods Training and Flexible Manufacturing Center in Mercer County, WV. This project was characterized in the other body as benefiting just West Virginia. I would like to clarify that this is not the case. The center will benefit the entire hardwoods industry, which exists throughout Appalachia. The proposed training and flexible manufacturing center seeks to provide greater domestic processing of the hardwood resources of this country. Far too many of this Nation's timber resources are exported and processed abroad. Many small timber companies are unable to process their resources as a result of insufficient capital to invest in the necessary processing equipment. The proposed center would allow for use by industry, on a time-shared basis, of equipment that will allow them to manufacture products rather than having to export the product for processing elsewhere. This would retain the economic benefit in the domestic market.

So, I urge the Senate to adopt the conference report and amendments thereto as proposed by the House.

I will yield to Senator NICKLES for any remarks he cares to make.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I am pleased to support the chairman's remarks and his introduction of the conference committee report for the fiscal year 1992 Interior appropriations bill. I want to thank the chairman for his efforts in bringing the conference report to the Senate floor. Senator BYRD had made my first year as ranking member on this subcommittee much easier by providing me assistant and guidance through the process. I wish to express my sincere appreciation for Senator BYRD's help in the process. It is with his leadership that we are able to present a fine, balanced product with attentive consideration to the member requests.

A tremendous amount of work and energy has gone into putting this bill together this year. There were 226 amendments in the Interior bill and approximately 2,000 items of difference between the House and Senate bills. I am told that we have set records of longevity while working our way to the conclusion of the conference report that we submit to you today. We have faced challenges such as a moratorium on mining patents, compromises of energy-related matters, the setting of timber sale program levels, grazing fee increases, the National Endowment for the Arts amendments and others.

The conference report is within the 602(b) allocations of $13.102 billion for budget authority and $12.05 billion for outlays. The budget authority in this conference report has increased only by 1.2 percent over the fiscal year 1991 appropriation. Outlays have increased by 1 percent. The conference material before you presents the meshing of the priorities from both Houses, attention to agency needs, and consideration for Member requests. The decisions that are being made in this bill are not just for fiscal year 1992. Our recommendations, while at the allocation limits, carefully balance appropriations and revenue generation impacts in fiscal year 1992 and in future years. The conference committee's recommendations will contribute to a balanced Federal budget while continuing to provide the expected Government services.

During our conference deliberations, deep concerns have been expressed over the changing uses of public lands and its resources. Such shifts have drastic effects on local rural communities and economies and on the funding of local governments. While keeping within our

limitations, the conferees have recognized the importance of programs to employment, the economies, the infrastructure, and the social fabric of many rural communities. I believe we have been able to produce a bill which is acceptable to the administration.

Mr. President, again I wish to thank the chairman with whom I have worked very closely. I wish to express my appreciation to Senator BYRD's staff: Charlie Estes, Sue Masica, Rusty Mathews, Carla Burzyk, and Ellen Donaldson. The Senator from West Virginia and his staff have made this a bipartisan effort which makes the task certainly much easier and achievable.

Mr. DURENBERGER. Mr. President, I rise in support of the conference report on the Interior and related agencies appropriations bill. I am thankful for the number of Minnesota projects that were funded in this bill, especially given the fiscal constraints under which the Appropriations Committee was working.

I would like, however, to reiterate my commitment to two projects that I addressed in a colloquy with my colleague from Oklahoma, Senator NICKLES, in September. Specifically, they are the Grand Portage Visitors Center and the Upper Mississippi River Environmental Education Center.

The Grand Portage Visitors Center received planning money by the full Appropriations Committee in 1986 and 1990. This project is now ready for construction, and I want to remind the committee that I will be seeking funding for this worthy project again next year.

Second, regarding the Upper Mississippi River Environmental Education Center. I want to remind the committee of my interest in this project, as evidenced by my introduction of S. 1048, a bill authorizing appropriations for this project. I hope to enact this legislation in a timely fashion and would appreciate the committee's consideration of this project at that time.

Thank you, Mr. President. I yield the floor.

Mr. SASSER. Mr. President, the Senate Budget Committee has examined H.R. 2686, the Interior appropriations bill and has found that the bill is under its 602(b) budget authority allocation by $210 million and under its 602(b) outlay allocation by $1 million.

I compliment the distinguished manager of the bill Senator BYRD, and the distinguished ranking member of the Interior Subcommittee, Senator NICKLES on all of their hard work.

Mr. President, I have a table prepared by the Budget Committee which shows the official scoring of the Interior appropriations bill and I ask unanimous consent that it be inserted in the RECORD at the appropriate point.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

SENATE BUDGET COMMITTEE SCORING OF H.R. 2686, INTERIOR SUBCOMMITTEE—SPENDING TOTALS

[Conference; in billions of dollars]

Bill summary	Budget authority	Outlays
H.R. 2686:		
New BA and outlays	12.3	7.9
Enacted to date	.7	4.2
Adjustment to conform mandatory programs to resolution assumptions	.....	.....
Scorekeeping adjustments	0	0
Bill total	13.0	12.1
Senate 602(b) allocation	13.2	12.1
Total difference	−.2	.....
Discretionary:		
Domestic	12.9	12.0
Senate 602(b)	13.1	12.1
Difference	−.2	.....
International	0	0
Senate 602(b)	0	0
Difference	0	0
Defense	0	0
Senate 602(b)	0	0
Difference	0	0
Total Discretionary spending	12.9	12.0
Mandatory spending	.1	.1
Mandatory allocation	.1	.1
Difference	0	0
Discretionary total above (+) or below (−):		
President's request	.8	−.2
House-passed bill	−.4	−.1
Senate-passed bill	−.1	−.1

Mr. ADAMS. Mr. President, I rise to support the conference report on H.R. 2686, the Interior and related agencies appropriations bill for 1992.

I want to thank Chairman BYRD and the conferees for their hard work under particularly difficult circumstances this year. I want to especially thank them for appropriations very important to my home State of Washington.

Included was $10.169 million for the Mount St. Helens Volcanic Monument. These funds are critical to allow construction to keep pace with overwhelming increases in visitation and to protect the monument's unique resources and ongoing research programs. This appropriation will match a bold and substantial offer by Cowlitz County of an additional $500,000 to keep construction of the project on schedule.

Mr. President, I also want to thank the committee for providing $1.6 million for the purchase of McGlynn Island for the Swinomish Tribe. The land acquisition will protect a pristine island for generations to come. I also thank the committee for including $125,000 for the Makah Tribal Fisheries program in my State.

I am especially pleased with the increases in BLM resource management funds for the Lake Creek project near Odessa, WA. These funds are needed to restore important wetlands and provide public access, recreational, and educational programs. My request was for $400,000 and I understand a significant portion of the general increases are to be used for the Lake Creek project.

There are numerous other requests the conferees honored. I will not go into each request here, but just let me say I appreciate the cooperation and evenhandedness displayed in crafting this bill.

The PRESIDING OFFICER. The question is on agreeing to the conference report. The yeas and nays have been ordered. The clerk will call the roll.

The assistant bill clerk called the roll.

Mr. FORD. I announce that the Senator from Iowa [Mr. HARKIN], the Senator from Nebraska [Mr. KERREY], and the Senator from Pennsylvania [Mr. WOFFORD] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 93, nays 4, as follows:

[Rollcall Vote No. 240 Leg.]

YEAS—93

Adams	Exon	Metzenbaum
Akaka	Ford	Mikulski
Baucus	Fowler	Mitchell
Bentsen	Garn	Moynihan
Biden	Glenn	Murkowski
Bingaman	Gore	Nickles
Bond	Gorton	Nunn
Boren	Graham	Packwood
Bradley	Gramm	Pell
Breaux	Grassley	Pressler
Bryan	Hatch	Pryor
Bumpers	Hatfield	Reid
Burdick	Heflin	Riegle
Burns	Hollings	Robb
Byrd	Inouye	Rockefeller
Chafee	Jeffords	Rudman
Coats	Johnston	Sanford
Cochran	Kassebaum	Sarbanes
Cohen	Kasten	Sasser
Conrad	Kennedy	Seymour
Craig	Kerry	Shelby
Cranston	Kohl	Simon
D'Amato	Lautenberg	Simpson
Danforth	Leahy	Specter
Daschle	Levin	Stevens
DeConcini	Lieberman	Symms
Dixon	Lott	Thurmond
Dodd	Lugar	Wallop
Dole	Mack	Warner
Domenici	McCain	Wellstone
Durenberger	McConnell	Wirth

NAYS—4

Brown	Roth
Helms	Smith

NOT VOTING—3

Harkin	Kerrey	Wofford

So the conference report was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. BAUCUS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD. Mr. President, this request has been cleared with Senator NICKLES, my colleague on the Appropriations Subcommittee on the Department of the Interior. It has his approval.

I ask unanimous consent that the Senate concur en bloc with the amendments of the House to the amendments of the Senate with the exception of amendments Nos. 164, 167, and 191.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The amendments of the House to the amendments of the Senate agreed to en bloc are as follows:

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 1 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum proposed by said amendment, insert "$538,940,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 6 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the date named in said amendment, insert "October 1, 1992".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 9 to the aforesaid bill, and concur therein with an amendment as follows: Restore the matter stricken by said amendment, amended to read as follows:

EMERGENCY DEPARTMENT OF THE INTERIOR FIREFIGHTING FUND

For the purpose of establishing an "Emergency Department of the Interior Firefighting Fund" in the Treasury of the United States to be available only for emergency rehabilitation and wildfire suppression activities of the Department of the Interior, $100,869,000, to remain available until expended: *Provided*, That all funds available under this head are hereby designated by Congress to be "emergency requirements" pursuant to section 251(b)(2)(D) of the Balanced Budget and Emergency Deficit Control Act of 1985: *Provided further*, That hereafter, beginning in fiscal year 1993, and in each year thereafter, only amount for emergency rehabilitation and wildfire suppression activities that are in excess of the average of such costs for the previous ten years shall be considered "emergency requirements" pursuant to section 251(b)(2)(D) of the Balanced Budget and Emergency Deficit Control Act of 1985, and such amounts shall hereafter be so designated.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 12 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum proposed by said amendment, insert "$90,274,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 16 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter inserted by said amendment, insert ": *Provided*, That none of the funds in this Act may be expended to reintroduce wolves in Yellowstone National Park and Central Idaho".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 18 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum proposed by said amendment, insert "$114,895,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 19 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter stricken by said amendment, insert "of which $400,000 shall be available for expenses to carry out the Anadromous Fish Conservation Act (16 U.S.C. 757a–757g) and of which $13,000,000 for Walnut Creek NWR, IA shall be made available on September 30, 1992."

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 24 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum proposed by said amendment, insert "$100,117,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 26 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter inserted by said amendment, insert:

"NORTH AMERICAN WETLANDS CONSERVATION FUND

"For expenses necessary to carry out the provisions of the North American Wetlands Conservation Act, P.L. 101–233, in fiscal year 1992 and thereafter, amounts above $1,000,000 received under section 6 of the Migratory Bird Treaty Act (16 U.S.C. 707) as penalties or fines or from forfeitures of property or collateral, but not to exceed $12,000,000, to remain available until expended.".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 32 to the aforesaid bill, and concur therein with an amendment as follows: Restore the matter stricken, amended to read as follows: ": *Provided further*, That hereafter appropriations for maintenance and improvement of roads within the boundary of the Cuyahoga Valley National Recreation Area shall be available for such purposes without regard to whether title to such road rights-of-way is in the United States: *Provided further*, That notwithstanding any other provision of law, hereafter the National Park Service may make road improvements for the purpose of public safety on Route 25 in New River Gorge National River between the towns of Glen Jean and Thurmond".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 33 to the aforesaid bill, and concur therein with an amendment as follows: ": *Provided further*, That of the funds provided herein, $65,000 is available for a cooperative agreement with the Susan LaFlesche Picotte Center".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 34 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the number "fifteen" in said amendment insert "ten".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 37 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum proposed by said amendment, insert "$23,090,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 39 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum proposed by said amendment, insert "$275,801,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 40 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum proposed by said amendment, insert "$8,440,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 41 to the aforesaid bill, and concur therein with an amendment as follows: Restore the matter stricken, amended to read as follows: ": *Provided further*, That of the funds provided under this heading, $1,400,000 shall be available for site acquisition and site preparation for the Lincoln Center in Springfield, Illinois: *Provided further*, That up to $376,000 of the funds provided under this head, to be derived from the Historic Preservation Fund, established by the Historic Preservation Act of 1966 (80 Stat. 915), as amended (16 U.S.C. 470), shall be available until expended for emergency stabilization of the Kennicott, Alaska copper mine, such funds to be transferred to the Alaska State Historic Preservation Office".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 52 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter inserted by said amendment, insert: ": *Provided further*, That Federal funds available to the National Park Service may be used for improvements to the National Park Service rail excursion line between milepost 132.7 and 120.55 located in Northeastern Pennsylvania".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 55 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum proposed by said amendment, insert "$590,054,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 63 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum proposed by said amendment, insert "$176,690,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 64 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum proposed by said amendment, insert "$101,682,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 65 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum proposed by said amendment, insert "$111,100,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 68 to the aforesaid bill, and concur therein with amendments as follows: In lieu of the matter stricken by said amendment, insert: ": *Provided*, That of the funds herein provided up to $22,000,000 may be used for the emergency program authorized by Section 410 of Public Law 95–87, as amended, of which no more than 20 percent shall be used for emergency reclamation projects in any one State and funds for federally administered emergency reclamation projects under this proviso shall not exceed $15,000,000: *Provided further*, That 23 full-time equivalent positions are to be maintained in the Anthracite Reclamation Program at the Wilkes-Barre Field Office".

On page 26 beginning on line 9 of the House engrossed bill, H.R. 2686, strike: "of which, notwithstanding any other provision of law, the following amounts shall be available to carry out the various provisions of section 402(g) of Public Law 95–87, as amended (30 U.S.C. 1232(g))".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 69 to the aforesaid bill, and concur therein with an amendment as follows: After the word "*Provided*" in said amendment, insert "*further*".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 76 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum proposed by said amendment, insert "$75,912,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 86 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter inserted by said amendment: "*Provided further*, That until such time as legislation is enacted to the contrary, none of the funds appropriated in this or any other Act for the benefit of Indi-

ans residing within the jurisdictional service area of the Cherokee Nation of Oklahoma shall be expended by other than the Cherokee Nation, nor shall any funds be used to take land into trust within the boundaries of the original Cherokee territory in Oklahoma without the consent of the Cherokee Nation".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 87 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter inserted by said amendment, insert: ": *Provided further*, That the Task Force on Bureau of Indian Affairs Reorganization shall continue activities under its charter as adopted and amended on April 17, 1991: *Provided further*, That any reorganization proposal shall not be implemented until the Task Force has reviewed it and recommended its implementation to the Secretary and such proposal has been submitted to and approved by the Committees on Appropriations, except that the Bureau may submit a reorganization proposal related only to management improvements, along with Task Force comments or recommendations to the Committees on Appropriations for review and disposition by the Committees".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 89 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter inserted by said amendment, insert ": *Provided further*, That within available funds $100,000 is available to lease space in a facility to be constructed by the Nez Perce Tribe in Lapwai, Idaho: *Provided further*, That the Bureau of Indian Affairs will incorporate General Services Administration Market Survey findings into the final lease agreement: *Provided further*, That notwithstanding any other provision of law, $150,000 shall be provided to the Blackfeet Tribe for a model trust department pilot program".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 105 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter inserted by said amendment, insert ": *Provided further*, That $2,000,000 shall be available on an ex gratia basis for the relocation and resettlement of the people of Rongelap on Rongelap Atoll: *Provided further*, That such funds shall remain available for deposit into a Rongelap Resettlement Trust Fund to be used by the people of Rongelap under the terms and conditions as set forth in a trust agreement or amendment thereto approved by the Rongelap Local Government Council subject only to the disapproval of the Secretary of the Interior: *Provided further*, That the Government of the Republic of the Marshall Islands and the Rongelap Local Government Council shall provide for the creation of the Rongelap resettlement Trust Fund to assist in the resettlement of Rongelap Atoll by the people of Rongelap, and the employment of the manager of the Rongelap fund established pursuant to the Section 177 Agreement (pursuant to Section 177 of Public Law 99-239) as trustee and manager of the Rongelap Resettlement Trust Fund, or, should the manager of the Rongelap fund not be acceptable to the people of Rongelap, another United States investment manager with substantial experience in the administration of trusts and with funds under management in excess of $250,000,000, subject only to the disapproval of the Secretary of the Interior: *Provided further*, That such funds shall be available only for costs directly associated with the resettlement of Rongelap by the people of Rongelap and for projects on Mejatto: *Provided further*, That the Secretary may approve expenditures of up to $500,000 in fiscal year 1992 for projects on Mejatto benefiting the people of Rongelap presently residing on the island of Mejatto: *Provided further*, That after fiscal year 1992, such projects on Majatto benefitting the people of Rongelap may be funded only from the interest and earnings generated by the trust fund corpus: *Provided further*, That such fund and the earnings and distribution therefrom shall not be subject to any form of Federal, State or local taxation: *Provided further*, That the Governments of the United States and the Trust Territory of the Pacific Islands shall not be liable in any cause of action in law or equity from the administration and distribution of the trust funds".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 108 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum proposed by said amendment, insert "$24,044,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 109 to the aforesaid bill, and concur therein with a amendment as follows: In lieu of the matter stricken and inserted by said amendment, insert "$2,190,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 124 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter inserted by said amendment, insert:

SEC. 117. Section 105 of Public Law 100-675 is hereby amended by adding the following new subsection:

"(c) AUTHORITY TO DISBURSE INTEREST INCOME FROM THE SAN LUIS REY TRIBAL DEVELOPMENT FUND.—Until the final settlement agreement is completed, the Secretary is authorized and directed, pursuant to such terms and conditions deemed appropriate by the Secretary, to disburse to the San Luis Rey Indian Water Authority, hereinafter referred to as the 'Authority', funds from the interest income which has accrued to the San Luis Rey Tribal Development Fund, hereinafter referred to as the 'Fund'. The funds shall be used only to assist the Authority in its professional development to administer the San Luis Rey Indian Water Settlement, and in the Authority's participation and facilitation of the final water rights settlement agreement of the five mission bands, subject to the terms of the Memorandum of Understanding Between the Band and the Department dated August 17, 1991."

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 126 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the first section number named in said amendment, insert "118".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 127 to the aforesaid bill, and concur therein with amendments as follows: In lieu of the matter proposed by said amendment, insert:

SEC. 119. None of the funds appropriated in the Energy and Water Development Appropriations Act, 1992 (Public Law 102-104 shall be used to implement the proposed rule for the Army Corps of Engineers amending regulations on "ability to pay" (33 CFR Part 241), published in the Federal Register, vol. 56, No. 114, on Thursday, June 13, 1991.

SEC. 120. (a) The Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1992 (H.R. 2608), is amended as follows:

(1) The third paragraph in title I (under the headings "Justice Assistance" and "Office of Justice Programs" within amounts for the Department of Justice) is amended by striking out the period at the end and inserting in lieu thereof ": *Provided*, That of the $76,000,000 appropriated herein, $4,000,000 shall be derived from deobligated funds previously awarded under part B and subparts I and II of part C of title II of said Act.".

(2) The paragraph in title I under the heading "Salaries and Expenses" under the heading "Federal Communications Commission" is amended by striking out "For total obligations" and inserting in lieu thereof "For necessary expenses".

(3) The paragraph in title IV under the heading "Payment to the Legal Services Corporation" under the heading "Legal Services Corporation" is amended by inserting ", coordinated through the national Legal Services Corporation office," in the proviso after "such Institutes".

(b) The amendments made by subsection (a) shall take effect as if included in the Departments of Commerce, Justice, and State, and the Judiciary, and Related Agencies Appropriations Act, 1992, on the date of the enactment of such Act.

On page 91, line 7 of the House engrossed bill, H.R. 2686, strike "22" and insert "15".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 129 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum proposed by said amendment, insert "$184,107,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 131 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter proposed by said amendment, insert: ": *Provided further*, That a grant of $550,000 shall be available to Berkeley County, South Carolina.".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 133 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter inserted by said amendment, insert: ": *Provided further*, That $5,000,000 shall be available for necessary expenses of the Forest Legacy Program, as authorized by section 1217 of Public Law 101-624, the Food, Agriculture, Conservation and Trade Act of 1990: *Provided further*, That the Forest Service shall not, under authority provided by this section, enter into any commitment to fund the purchase of interests in lands, the purchase of which would exceed the level of appropriations provided by this section."

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 133 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter proposed by said amendment, insert: ": *Provided further*, That timber volume authorized or scheduled for sale during fiscal year 1991, but which remains unsold at the end of fiscal year 1991 shall be offered for sale during fiscal year 1992 in addition to the fiscal year 1992 timber sale volume to the extent possible: *Provided further*, That within available funds, up to $238,000 shall be available for a cooperative agreement with Alabama A&M University".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 142 to the aforesaid bill, and concur therein with an amendment as follows: Restore the matter stricken by said amendment, amended to read as follows:

EMERGENCY FOREST SERVICE FIREFIGHTING FUND

For the purpose of establishing an "Emergency Forest Service Firefighting Fund" in the Treasury of the United States to be available only for emergency rehabilitation and wildfire suppression activities of the Forest Service, $112,000,000, to remain available until expended: *Provided*, That all funds available under this head are hereby designated by Congress to "emergency requirements" pursuant to section 251(b)(2)(D) of the Balanced Budget and Emergency Deficit Control Act of 1985: *Provided further*, That hereafter, beginning in fiscal year 1993, and in each year thereafter, only amounts for emergency rehabilitation and wildfire suppression activities that are in excess of the average of such costs for the previous ten years shall be considered "emergency requirements" pursuant to section 251(b)(2)(D) of the Balanced Budget and Emergency Deficit Control Act of 1985, and such amounts shall hereafter be so designated.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 144 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum stricken and inserted by said amendment, insert: "$82,089,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 157 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter stricken by said amendment, insert:

None of the funds made available to the Forest Service in this act shall be expended for the purposes of administering a special use authorization permitting land use and occupancy and surface disturbing activities for any project to be constructed on Rock Creek, Madera County, California, until a study has been completed and submitted to the Congress by the Forest Service in consultation with the U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, the California State Water Resources Control Board, the California Department of Fish and Game and other interested public parties regarding the project's potential cumulative impacts on the environment, together with a finding that there will be no substantial adverse impact on the environment. Findings from the study must be presented at no less than three public meetings.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 163 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter proposed in said amendment, insert:

As a pilot effort, for the purpose of achieving ecologically defensible management practices, the Kaibab and Dixie National Forests are authorized to apply the value or a reasonable portion of the value of timber removed under a stewardship end result contract as an offset against the cost of stewardship services received including, but not limited to, site preparation, replanting, silviculture programs, recreation, wildlife habitat enhancement, and other multiple-use enhancements on selected projects. Timber removed shall count toward meeting the Congressional expectations for the annual timber harvest.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 165 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter stricken and inserted by said amendment, insert:

"The first paragraph under this head in Public Law 101-512, is amended by striking the phrase "$150,000,000 on October 1, 1991, $225,000,000 on October 1, 1992" and inserting "$100,000,000 on October 1, 1991, $275,000,000 on October 1, 1992".

"Notwithstanding the issuance date for the fifth general request for proposals under this head in Public Law 101-512, such request for proposals shall be issued not later than July 6, 1992, and notwithstanding the proviso under this head in Public Law 101-512 regarding the time interval for selection of proposals resulting from such solicitation, project proposals resulting from the fifth general request for proposals shall be selected not later than ten months after the issuance date of the fifth general request for proposals: *Provided*, That hereafter the fifth general request for proposals".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 175 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter proposed by said amendment, insert: ": *Provided further*, That the funds provided under this head in fiscal year 1991 for the purchase of supercomputer time needed for Fossil Energy programmatic purposes shall be provided as a grant to the University of Nevada-Las Vegas: *Provided further*, That disbursement pursuant to such a grant shall be made only upon the actual use of such supercomputer time upon request by Fossil Energy and receipt by Fossil Energy of the products therefrom".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 179 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter stricken and inserted by said amendment, insert: "Monies received as investment income on the principal amount in the Great Plains Project Trust at the Norwest Bank of North Dakota, in such sums as are earned as of October 1, 1991, shall be deposited in this account and immediately transferred to the General Fund of the Treasury, Monies received as revenue sharing from the operation of the Great Plains Gasification Plant shall be immediately transferred to the General Fund of the Treasury: *Provided*, That the Department of Energy shall not agree to modifications to the Great Plains Project Trust Agreement, dated October 31, 1988, that are not consistent with the following criteria: (1) for the purposes of financing a sulfur control technology project using Government contributions from the Trust, the cost of such project shall not include costs of plant downtime or outages; (2) upon modification of the Trust Agreement the Department shall immediately transfer $20,000,000 from the Reserve Account to the Environmental Account, both established pursuant to section 2(b) of the Trust Agreement, and shall provide a loan from the Reserve Account for 40 percent of the remaining project costs after the disbursement of funds from the Environmental Account in an amount not to exceed $30,000,000 and at the rate of interest specified in sections 1 and 7(b) of the Trust Agreement; (3) no disbursements for construction shall be made from either the Reserve Account or from funds which have been transferred to the Environmental Account from the Reserve Account prior to receipt by Dakota Gasification Company of an amended Permit to Construct from the North Dakota State Department of Health; (4) the Government contribution from the Reserve Account shall be disbursed on a concurrent and proportional basis with the contribution from the Dakota Gasification Company; (5) repayment of any loan shall be from revenues not already due the Government as part of the Asset Purchase Agreement, dated October 7, 1988, and at least in proportion to the Government contribution to the costs of the project net of the disbursement from the Environmental Account, for any increased revenues or profits realized as a result of the sulfur control project; and (6) such contributions from the Reserve Account, including funds to be transferred to the Environmental Account, shall be made available contingent upon a finding by the Secretary, in the form of a report to Congress submitted not later than March 1, 1992, that such planned project modifications are cost effective and are expected to meet such environmental emissions requirements as may exist.".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 180 to the aforesaid bill, and concur therein with amendments as follows: In lieu of the matter stricken and inserted by said amendment, insert: "$225,300,000 to remain available until expended: *Provided*, That notwithstanding any other provision of law, revenues received from use and operation of Naval Petroleum Reserves Numbered 1, 2, and 3 and the Naval Oil Shale Reserves and estimated to total $523,000,000 for fiscal year 1992 shall be retained and used for the specific purpose of offsetting costs incurred by the Department in carrying out naval petroleum and oil shale reserve activities: *Provided further*, That the sum herein appropriated shall be reduced as such revenues are received so as to result in a final fiscal year 1992 appropriation estimated at not more than $0".

On page 64, lines 22 and 23 of the House engrossed bill, H.R. 2686, strike: ", to remain available until expended".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 185 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum named in said amendment, insert "$3,000,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 190 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum proposed by said amendment, insert "$15,100,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 193 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum proposed by said amendment, insert "$137,000,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 195 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum named in said amendment, insert "$1,449,871,000, of which $5,000,000 shall be available on September 30, 1992 and shall remain available until expended for the Morris K. Udall Scholarship Foundation subject to the passage of authorizing legislation".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 196 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum proposed by said amendment, insert "$301,311,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 201 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum proposed by said amendment, insert "$26,172,000".

Resolved, That the House recede from its disagreement to the amendment of the Sen-

ate numbered 214 to the aforesaid bill, and concur therein with an amendment as follows; In lieu of the matter stricken and inserted by said amendment, insert "$1,000,000 for the dissertation fellowship program and $5,700,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 218 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum proposed by said amendment, insert "$5,126,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 219 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum proposed by said amendment, insert "$11,005,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 222 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter proposed by said amendment, insert:

SEC. 318. With the exception of budget authority for "Miscellaneous payments to Indians", Bureau of Indian Affairs, Department of the Interior; "Salaries and expenses", National Indian Gaming Commission, Department of the Interior; "Payment to the Institute", Institute of American Indian and Alaska Native Culture and Arts Development; "Salaries and expenses", Woodrow Wilson International Center for Scholars; "Salaries and expenses" and "National capital arts and cultural affairs", Commission on Fine Arts; "Salaries and expenses", Advisory Council on Historic Preservation; "Salaries and expenses", National Capital Planning Commission; "Salaries and expenses", Franklin Delano Roosevelt Memorial Commission; and "Salaries and expenses" and "Public development", Pennsylvania Avenue Development Corporation, each amount of budget authority for the fiscal year ending September 30, 1992, provided in this Act, for payments not required by law is hereby reduced by 1.26 per centum: Provided, That such reductions shall be applied ratably to each account, program, activity, and project provided for in this Act.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 224 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter inserted by said amendment, insert:

SEC. 319. LAND TRANSFER AND CONVEYANCE, PEASE AIR FORCE BASE, NEW HAMPSHIRE.

(a) TRANSFER BY THE AIR FORCE.—Notwithstanding any other provision of law, the Secretary of the Air Force shall transfer to the Department of the Interior a parcel of real property located west of McIntyre Road at the site of former Pease Air Force Base, New Hampshire: *Provided*, That the Secretary of the Air Force shall retain responsibility for any hazardous substances which may be found on the property so transferred.

(b) ESTABLISHMENT OF NATIONAL WILDLIFE REFUGE.—Except as provided in subsection (c), the Secretary of the Interior shall designate the parcel of land transferred under subsection (a) as an area in the National Wildlife Refuge System under the authority of section 4 of the Act of October 15, 1966 (16 U.S.C. 688dd).

(c) CONVEYANCE TO STATE OF NEW HAMPSHIRE.—

(1) CONVEYANCE.—Subject to paragraphs (2) through (5), the Secretary of the Interior shall convey to the State of New Hampshire, without consideration, all right, title, and interest of the United States in and to a parcel of real property consisting of not more than 100 acres that is a part of the real property transferred to the Secretary under subsection (a) and that the Secretary determines to be suitable for use as a cemetery.

(2) CONDITION OF CONVEYANCE.—The conveyance under paragraph (1) shall be subject to the condition that the State of New Hampshire use the property conveyed under that paragraph only for the purpose of establishing and operating a state cemetery for veterans.

(3) REVERSION—If the Secretary determines at any time that the State of New Hampshire is not complying with the condition specified in paragraph (2), all right, title, and interest in and to the property conveyed pursuant to paragraph (1), including any improvements thereon, shall revert to the United States and the United States shall have the right of immediate entry thereon.

(4) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the parcel of real property to be conveyed under paragraph (1) shall be determined by a survey that is satisfactory to the Secretary.

(5) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require any additional terms or conditions in connection with the conveyance under this subsection that the Secretary determines appropriate to protect the interests of the United States.

(d) The purposes for which this national wildlife refuge is established are—

(1) to encourage the natural diversity of plant, fish and wildlife species within the refuge, and to provide for their conservation and management;

(2) to protect species listed as endangered or threatened, or identified as candidates for listing pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(3) to preserve and enhance the water quality of aquatic habitat within the refuge; and

(4) to fulfill the international treaty obligations of the United States relating to fish and wildlife.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 226 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter proposed by said amendment, insert:

SEC. 320. Amend section 12(d)(2) of Public Law 94-204 (the Act of January 2, 1976) as follows:

(a) In the second sentence of the first proviso, following the words "public purposes" insert a period. Following the period add the following: "An area encompassing approximately sixty-two acres and depicted on the map entitled 'Native Heritage Park Proposal' and on file with the Secretary shall be managed".

(b) At the end of this section, add a new proviso: ": Provided further, That to the extent necessary, any and all conveyance documents executed concerning the conveyance of the lands referred to in this proviso shall be deemed amended accordingly to conform to this proviso".

Resolved, That the House insist on its disagreement to the amendments of the Senate numbered 130 and 167 to the aforesaid bill.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the amendments en bloc were just agreed to.

Mr. GORTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MESSAGES FROM THE HOUSE

ENROLLED BILL SIGNED

At 2:44 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

S. 1823. An act to amend the Veterans' Benefit and Services Act of 1988 to authorize the Department of Veterans Affairs to use for the operation and maintenance of the National Memorial Cemetery of Arizona funds appropriated during fiscal year 1992 for the National Cemetery System.

The enrolled bill was subsequently signed by President pro tempore [Mr. BYRD].

EXECUTIVE REPORTS OF COMMITTEES

The following executive report of committees were submitted:

By Mr. KENNEDY, from the Committee on Labor and Human Resources:

Delbert Leon Spurlock, Jr., of California, to be Deputy Secretary of Labor.

(The above nomination was reported with the recommendation that the nomination be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. KENNEDY, from the Committee on Labor and Human Resources, without amendment and an amended preamble:

S.J. Res. 133. Joint resolution in recognition of the 20th anniversary of the National Cancer Act of 1971 and the over 7 million survivors of cancer alive today because of cancer research.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. MACK:

S. 1892. A bill to amend title 11 of the United States Code to establish a priority for the payment of claims for retiree health benefits in liquidation cases under chapters 7 and 11; to the Committee on the Judiciary.

By Mr. CRAIG (for himself and Mr. SYMMS):

S. 1893. A bill to adjust the boundaries of the Targhee National Forest, to authorize a land exchange involving the Kaniksu National Forest, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. ROTH (for himself and Mr. MOYNIHAN):

S. 1894. A bill to amend the Trade Act of 1974 to provide trade adjustment assistance during the implementation and phase-in of the North American Free Trade Agreement, and for other purposes; to the Committee on Finance.

By Mr. BREAUX (for himself and Mr. FORD):

S. 1895. A bill to direct the Administrator of the Federal Aviation Administration to publish routes on flight charts to safely guide pilots operating under visual flight rules through, and in close proximity to, terminal control areas and airport radar service areas; to the Committee on Commerce, Science, and Transportation.

By Mr. RIEGLE (for himself and Mr. GARN) (by request):

S. 1896. A bill to provide funding for the resolution of failed thrifts and working capital for the Resolution Trust Corporation, to restructure the Oversight Board and the Resolution Trust Corporation, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. DOMENICI:

S. 1897. A bill to improve supervision and regulation of Government sponsored enterprises; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. DASCHLE (for himself, Mr. PRESSLER, Mr. INOUYE, Mr. MCCAIN, Mr. SIMON, Mr. BURDICK, and Mr. MURKOWSKI):

S.J. Res. 222. Joint resolution to designate 1992 as the "Year of Reconciliation Between American Indians and non-Indians"; to the Committee on the Judiciary.

By Mr. COATS:

S.J. Res. 223. Joint resolution to designate "National Stay in School Awareness Day"; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MACK:

S. 1892. A bill to amend title 11 of the United States Code to establish a priority for the payment of claims for retiree health benefits in liquidation cases under chapters 7 and 11; to the Committee on the Judiciary.

PRIORITY OF CLAIMS FOR RETIREE HEALTH BENEFITS

• Mr. MACK. Mr. President, I rise today to introduce legislation which will establish a much-needed priority for health care benefits of retirees, and families of retirees, whose former employers face liquidation under the Federal Bankruptcy Code.

In my home State of Florida, many retirees of Eastern Airlines will face extreme hardships due to the loss of medical benefits resulting from Eastern bankruptcy. Many of these retirees are under the age of 65 and therefore do not qualify for Medicare coverage, and they will essentially have no health insurance in December, when the current funds are estimated to expire.

Additionally, some retirees will be denied health insurance at that time due to pre-existing conditions. Eastern Airlines retirees are not alone in this plight. The retirees of a number of other corporations will face similar circumstances in the future unless Congress acts now to address this critical situation.

As my colleagues will recall, Congress enacted the Retiree Benefits Bankruptcy Act of 1988 following the collapse of LTV and thereby protected retirees whose employers were involved in chapter 11 reorganization proceedings. However, Public Law 100-334 did not go far enough by providing for retirees whose former employers eventually found themselves in liquidation.

My bill will amend chapters 7 and 11 of the Bankruptcy Code to establish a new priority for the health care benefits which retirees have always counted on. There would be a limitation of an aggregate amount totaling up to $10,000 multiplied by the relevant number of former employees. This will enable a bankruptcy judge to utilize wide latitude in approving health insurance plans for retirees, their spouses and children. A judge would also be able to take into consideration the unique needs of retirees who are ineligible to qualify for Medicare.

It is essential that this same new judicial latitude for the prioritization of the health care needs of retirees be provided to employees of corporations facing chapter 11 cases involving plans which provide for liquidation, and my bill does just that.

The protections provided under this bill will not disrupt the balance within the Bankruptcy Code under section 1114 between retiree needs and the immediate needs of successful reorganization. This legislation will establish a new priority for retiree health benefit claims where reorganization does not succeed without limiting any priority treatment of such claims in either in successful or unsuccessful reorganizations under other provisions of the law, including section 1114. For example, any retiree benefits in the Eastern Airlines bankruptcy case which may be entitled to administrative expense treatment will continue to be entitled to this if this bill becomes law.

Some might argue that there is not a contractual agreement between a corporation and its retirees regarding continued health care benefits should the corporation end up in bankruptcy proceedings. However, I believe it is essential that judges, at the very least, be given the latitude of granting a priority for the payment of claims for retiree health care benefits in cases involving chapter 7 and chapter 11 bankruptcy. The consequences of the loss of these benefits will, in many cases, lead to financial devastation for thousands of retirees, spouses, and dependents. Some estimates show that as many as 30 million Americans have no health insurance coverage whatsoever. Clearly, it makes no sense for Congress to statutorily prevent retiree medical benefits from being paid as a result of bankruptcy proceedings. I strongly urge my colleagues to join me in this effort.•

By Mr. CRAIG (for himself and Mr. SYMMS):

S. 1893. A bill to adjust the boundaries of the Targhee National Forest, to authorize a land exchange involving the Kaniksu National Forest, and for other purposes; to the Committee on Energy and Natural Resources.

IDAHO LAND EXCHANGE ACT OF 1991

• Mr. CRAIG. Mr. President, I am very pleased to introduce this legislation today along with my colleague from Idaho, Senator STEVE SYMMS.

The Idaho Land Exchange Act of 1991 will facilitate the exchange of lands between the Forest Service—USDA and the University of Idaho in Bonner County, and the Forest Service—USDA and the State of Idaho in Fremont County.

In Bonner County, the University of Idaho will gain ownership of the 35.27-acre Clark Fork Field Campus from the Kaniksu National Forest in exchange for 40 acres of university-owned property.

The Clark Fork Field Campus is the site of an old ranger station abandoned by the Forest Service in 1974. The buildings deteriorated into a state of disrepair. In 1980 the Forest Service was at a point of razing the buildings and reverting the site to forest. The university came forward with a proposal to rehabilitate the buildings and grounds, and to use them as a research and continuing education facility. The Forest Service granted this use under a Granger-Thye permit which is still in effect. Since 1980, the university has invested more than $200,000 in maintenance and capital investment to bring the site back to a condition superior to its condition when abandoned in 1974. The university's programs at this campus have proven popular and have been quite successful. There has been strong support from the local community.

This legislation enables the exchange by requiring that only land value be considered when equalizing the value of the exchanged tracts. The value of the buildings and improvements, which accrue to the Forest Service under the conditions of the permit, will not be considered in the appraisal. In other words, this bill recognizes that the current value of the buildings and improvements is the direct result of expenditures by the university, which should not be required to pay for them a second time. An exchange is desirable because the university wishes to make further improvements and expand its programs at Clark Fork, but is unwilling to do so if title remains with the Forest Service. That is understandable. Years of discussion between the Forest Service and the university have failed to find a method to effect the exchange which does not unduly penalize the university. Consequently, I have decided to offer this bill.

All other procedures normally required by law or regulation to implement a land exchange will be carried out as usual. This legislation will expand the national forest proclamation boundary to include the 40 acre tract to be exchanged by the university.

The bill also facilitates future exchanges between the Targhee National Forest and the State of Idaho in Fremont County by expanding the proclamation boundary of the national forest. No private lands are included in the expansion—only lands of the Idaho Department of Parks and Recreation.•

By Mr. ROTH (for himself and Mr. MOYNIHAN):

S. 1894. A bill to amend the Trade Act of 1974 to provide trade adjustment assistance during the implementation and phase-in of the North American Free Trade Agreement, and for other purposes; to the Committee on Finance.

NAFTA WORKER ADJUSTMENT ASSISTANCE ACT

• Mr. ROTH. Mr. President, during the debate on the extension of fast-track authority earlier this year the United States free trade negotiations with Mexico served as a focal point for those opposed to the extension. In response to the strong concerns that were raised over these free trade talks the President submitted an action plan on May 1. I rise today, along with my distinguished colleague, Senator MOYNIHAN, to introduce the NAFTA Worker Adjustment Assistance Act, which is designed to address one of the key commitments made in the President's action plan—the commitment to provide "a worker adjustment program that is adequately funded and that ensures that workers who may lose their jobs as a result of an FTA with Mexico will receive prompt, comprehensive, and effective services."

Mr. President, it is important, in my view, that we not wait for the North American Free Trade Agreement to be submitted to Congress before devising such a worker adjustment program. Now is the time to begin the process of stimulating discussion on the key issues involved, and to build the consensus that will be needed to meet the commitment made in the May 1 action plan. The legislation we are introducing today will move this process forward.

The NAFTA Worker Adjustment Assistance Act is built on the premise that the current Trade Adjustment Assistance [TAA] Program should form the basis of any special program for workers affected by an FTA with Mexico for two important reasons. First, it has been an effective and positive program which has strong support at the State and worker level. This was recently underscored by several witnesses during hearings before the Committees on Finance and Ways and Means.

Second, but not any less important, is the fact that Congress has made itself very clear since creating TAA in 1962 that providing special adjustment assistance programs for trade-impacted workers should go hand-in-hand with major trade liberalization action on the part of our Government. This remains just as true, if not more true, today.

There is no question that the launching of the North American free trade negotiations is a major trade liberalizing initiative. In fact, it is unprecedented in many ways. Above all, it will be the first time the United States has ever negotiated a comprehensive free trade agreement with a major developing country which is also a top trader with the United States. Mexico is, in fact, our third largest trading partner. While I believe these negotiations hold great economic promise for the United States, it is clear at the same time that difficult, structural change will also occur.

By building on the current TAA program, I believe we can provide the type of help that workers affected by such structural change will need. The NAFTA Adjustment Assistance Act accomplishes this by creating a special rule under TAA to ensure that workers who may be dislocated by free trade with Mexico will be eligible for the full range of TAA benefits. The special rule accomplishes this by expanding TAA eligibility to workers dislocated because a United States plant has moved to Mexico to take advantage of the free trade agreement. Moreover, the bill provides for an expedited procedure for automatically certifying the workers affected by such a plant relocation if the company relocating was subject to the advanced notification requirements under the Worker Adjustment and Retraining Notification Act.

In addition to expanding TAA's eligibility coverage to include workers impacted by production shifts to Mexico, the legislation raises the current $80 million cap on training to $100 million. This aim to account for the increase in training that may be needed as a result of dislocation caused by NAFTA.

Other changes are made to improve the general operation of the current TAA program. These changes, including greater emphasis on early and effective reemployment services such as job search assistance, are based on recent studies and testimony before Congress. Another change is to create greater followup of workers participating in the TAA program to gauge more accurately the effectiveness of the services being provided.

One important reason for moving ahead now to devise an effective worker adjustment program in relation to NAFTA is the need to provide new funding. I believe that the main beneficiaries of a free trade agreement with Mexico should be willing to help the workers who will be hurt by it by supporting a temporary, de minimus uniform import fee at the border. A negotiated small border fee would allow both sides to afford special worker adjustment programs, and would be, in my view, much more preferable to other funding alternatives such as imposing some new form of permanent payroll or other tax.

Under the NAFTA Worker Adjustment Assistance Act, the President is directed to seek agreement with Mexico on the imposition of this type of small border fee. As I stated to Ambassador Hills in a letter this past August, the ability to impose a small adjustment fee should be an important negotiating objective with our Mexican counterparts. Other Members of Congress are now starting to raise this idea, and I hope that such support will grow.

For some time now, I have supported pursuing this approach for funding U.S. trade-related worker adjustment needs. In the 1988 Omnibus Trade Act, for example, I authored a provision requiring the President to seek multilateral agreement in the GATT along these very lines. This provision, I might add, was strongly endorsed by my colleagues on both sides of the aisle. We should now take advantage of the opportunity presented by the NAFTA talks to negotiate such a fee with Mexico. This should be much less difficult than accomplishing the same goal with well over 100 countries. It could, in fact, help pave the way for future agreement in this area on a plurilateral and multilateral basis.

Mr. President, as I stated earlier, my intention in introducing this legislation is to stimulate serious discussion early on how to provide effective adjustment assistance to workers who may be dislocated by free trade with Mexico, and how to pay for it. It is a focused bill which aims to address the specific worker adjustment needs under a North American Free Trade Agreement, while making some general improvements to the broader operation of the TAA program.

I view this legislation as an important starting point. I believe that the results of the recently-launched GAO investigation on TAA and other worker adjustment assistance programs, such as title III of the Job Training and Partnership Act, will shed additional light on possible improvements to these programs. I do not believe, however, that we should wait for the investigation to be completed before moving forward.

Along with my statement is a section-by-section summary of the bill, that I ask unanimous consent to have printed in the RECORD. I look forward to working with my colleagues in addressing what I believe to be an essential part of the NAFTA negotiations.

There being no objection, the summary was ordered to be printed in the RECORD, as follows:

SECTION-BY-SECTION SUMMARY OF THE NORTH AMERICAN FREE TRADE AGREEMENT WORKER ADJUSTMENT ASSISTANCE ACT

Section 1. Short Title.—The NAFTA Worker Adjustment Assistance Act.

Section 2. Eligibility of Workers Affected by NAFTA.—Creates a special transitional rule under the current Trade Adjustment Assistance (TAA) program to ensure adequate coverage for workers dislocated because of the implementation and operation of a North American Free Trade Agreement. This is accomplished by allowing workers to be eligible for TAA if the Secretary of Labor determines that a free trade agreement with Mexico has "contributed importantly" to a shift in U.S. production in Mexico. Based on the provisions of the Worker Adjustment and Retraining Notification Act (WARN), workers are provided automatic certification under TAA 10 days after the Department of Labor receives notice under WARN if the Secretary has determined that there has been a shift in production to Mexico and that NAFTA contributed importantly to such shift. The special rule is effective 30 days after the United States enters into a North American Free Trade Agreement until the agreement is fully phased in.

Section 3. General Changes to Title II of the Trade Act of 1974.—Miscellaneous changes are made to the existing TAA program to improve its general operation. Greater emphasis is placed on early and effective provision of reemployment services such as job search assistance. The current training cap of $80 million is raised to $100 million to account for any possible increase in workers dislocated due to NAFTA. Additional provisions call upon the Department of Labor to work with each State in establishing a standardized reporting system to help determine the effectiveness of the TAA program.

Section 4. Funding for NAFTA Adjustment Assistance.—Directs the President to seek agreement with Mexico on a small uniform import fee sufficient to cover the additional costs of the NAFTA Worker Adjustment Assistance Act. In the event the President fails to garner such agreement, a certain portion of the tariff revenue on imports from Mexico will be allocated for the same purpose as the import fee. Further funding is provided by any future tariff revenue that may be collected as a result of implementation of special safeguard provisions under the North American Free Trade Agreement.

Section 5. Trade Adjustment Assistance Fund.—Creates a Trade Adjustment Assistance Fund to which the funds from Section 4 would be allocated. The Fund is designed to cover the additional expenses under the Act.

Section 6. Reauthorization of TAA.—Reauthorizes the TAA program for five more years.•

• Mr. MOYNIHAN. Mr. President, I am most pleased to join with my colleague on the Finance Committee, Senator ROTH, in introducing a trade adjustment bill that would respond to the impact on United States workers of the proposed free trade agreement with Mexico. Senator ROTH and I have worked closely through the years to keep the trade adjustment program going despite opposition from successive administrations. We will do so again in this instance. We are asked to believe that the Bush administration finally has the message on trade adjustment when it comes to the Mexico FTA. I'm still skeptical. But the bill we introduce today is a good start—and I emphasize start—at making it clear that American workers cannot be left out of this process. Whether it has been multilateral GATT negotiations or bilateral free trade agreements we have failed in our commitments to individual workers who pay the price for general trade liberalization. The Mexico FTA now gives us another opportunity to institute a free trade adjustment program.

My involvement here goes back 30 years, when I first came to Washington with the Kennedy administration as an Assistant Secretary of Labor. One of my first tasks was to negotiate, with Hickman Price of the Commerce Department and Mike Blumenthal of the State Department, the Long Term Cotton Textile Agreement in 1962. This was one of the things we had to have in place to get on with the Kennedy round of GATT trade negotiations. The other was trade adjustment assistance. TAA as we call it. American labor made a modest and fair request. If some American workers were to lose their jobs for the overall benefit of the economy, then a program should be provided to help them get a new one.

Trade adjustment assistance was conceived by David MacDonald, then president of the United Steel Workers, as part of his work on the 1954 Presidential Commission on Foreign Economic Policy. During a decade in which the U.S. economy was so dominant and so robust, the idea of compensating workers in exchange for their support of the trade negotiations didn't seem radical. It certainly was affordable. Still it took 8 years and a Democratic administration to enact it in the Trade Expansion Act of 1962.

Since economic growth continued to climb in the 1960's, and the impact of global trade on the U.S. economy was modest, demands for trade adjustment assistance were light.

As the Nixon and then the Ford administrations launched the Tokyo round of GATT negotiations, a renewed commitment to trade adjustment assistance was made.

The Trade Act of 1974 not only was the law which first provided fast-track negotiating authority to a President, it also reauthorized the trade adjustment assistance program. This was part of an explicit agreement with American labor for their support of the Tokyo round. The TAA program initiated by President Kennedy was reaffirmed by President Ford. The Tokyo round proceeded.

I began my Senate service in 1977, and was appointed to the Committee on Finance which handles trade and tax matters. The first trade bill I voted upon—and I voted for it—was the Trade Agreements Act of 1979. The law to implement the results of the Tokyo round. If anyone had told me then that we would abandon our commitment to trade adjustment assistance, I'm not sure I would have voted the same way.

But, of a sudden, we did just that. The Reagan administration took office in 1981 with a doctrinal opposition to the trade adjustment assistance program. They claimed it was too expensive and did not achieve its intended purpose. I suspect some of the criticisms were true. But, instead of seeking its reform, the administration sought its abolition. The Omnibus Budget Reconciliation Act of 1981 was passed and trade adjustment assistance was killed. Spending on the program plummeted to $103 million, down from $1.5 billion the year before.

Nothing much has changed in the last decade. We have been able to keep the trade adjustment assistance program staggering along, and made some good reforms to it in the Trade Act of 1988, but by and large the administration has killed it. If the administrators of a program are instructed to fight its existence, one can't really expect success.

The commitments we kept to American labor through the Kennedy, Johnson, Nixon, Ford and Carter administrations were abrogated by the Reagan administration. This hostile policy has been continued by the Bush administration. Can it be any wonder then that the American labor movement has turned against the trade negotiation process?

Mr. President, I continue to have the strongest reservations about the free trade agreement with Mexico—the first free trade agreement we are being asked to consider with a country that isn't free. But if such an agreement is negotiated and is passed by the Congress, it ought only happen if the administration shows a new approach to the elemental issue of worker adjustment. Our bill will begin the debate on how this will be achieved.•

By Mr. BREAUX (for himself and Mr. FORD):

S. 1895. A bill to direct the Administrator of the Federal Aviation Administration to publish routes on flight charts to safely guide pilots operating under visual flight rules through, and in close proximity to, terminal control areas and airport radar service areas; to the Committee on Commerce, Science, and Transportation.

VISUAL FLIGHT RULE DEPARTURE AND ARRIVAL ROUTES

• Mr. BREAUX. Mr. President, it is time we put in place a system that should actually work in preventing mid-air collisions. Too often we see news reports of collisions and near-collisions between commercial aircraft and private aircraft around congested airports. In August 1986, an AeroMexico DC–9 collided with a Piper Archer aircraft at 6,400 feet above the Los Angeles area in Cerritos, CA. Earlier in 1978, a Pacific South-West Airlines Boeing 727 and a Cessna 172 collided over San Diego.

The Federal Aviation Administration establishes terminal control areas

[TCAs] and airport radar service areas [ARSAs] to reduce the midair collision potential in congested airspace that surrounds an airport with a high density or significant level of air traffic. In general, TCA's and ARSA's are airspace in which all aircraft, i.e., air carriers, general aviation, and military, must communicate with air traffic control for separation and traffic information services. Also, all aircraft must be equipped with automatic altitude reporting transponders which activate ground radar conflict alert and airborne TCA's systems.

Of course, pilots must recognize when they are approaching airspace which requires avoidance or directives from air traffic control. The FAA publishes charts that depict the lateral and vertical dimensions of TCA's and ARSA's to assist pilots in circumnavigating those areas or contacting air traffic control prior to entering.

Mr. President, a major problem with TCA's is that in some areas the boundaries of forbidden zones are too difficult to figure out. For example, in mountainous terrains, TCA's, according to the AOPA Pilot magazine, may be shaped like "jig-saw puzzles of slivers, slices, and chunks of airspace that make compliance difficult for even experienced pilots.

I understand, Mr. President, that a TCA system was in place at the Los Angeles area airport when the 1986 collision occurred over Cerritos. Experts argue that had a San Diego TCA been in effect in 1978, that accident still would have occurred. We accept the FAA's assertion that TCA's have reduced the annual conflicts between aircraft, but there is still a problem with TCA's. Airline pilots still list mid-air collisions as their main safety concern. While good statistics may mean that fewer lives are lost, one collision over any time period is still one collision too many.

We are introducing a bill today, Mr. President, that will provide pilots invaluable additional assistance in their efforts to avoid mid-air collisions. This bill requires the FAA to make it possible for pilots to rely less on TCA charts that tell a pilot "where he/she may not fly" by publishing optional use, visual flight rules charts that indicate "where he/she can fly" safely when coming into or leaving a high-traffic terminal area. No longer would "a pilot be forced to concentrate on interpreting a TCA chart when he should be scanning the skies for traffic." The FAA would provide charts with preplanned routings: The pilot would just follow lines and altitudes on the chart to safely navigate the maze around a congested airport. The proposed visual flight rules arrival chart concept is similar to the idea of the already-in-use standard instrument departure chart.

Mr. President, the original version of this bill, H.R. 3243, was introduced by Congressman JIM INHOFE in August of this year. The House bill has 139 cosponsors. We are hopeful that our Senate colleagues will immediately recognize the value of this legislation, and will support us in securing its enactment.●

By Mr. RIEGLE (for himself and Mr. GARN) (by request):

S. 1896. A bill to provide funding for the resolution of failed thrifts and working capital for the Resolution Trust Corporation, to restructure the Oversight Board and the Resolution Trust Corporation, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

RESOLUTION TRUST CORPORATION

● Mr. RIEGLE. Mr. President, the administration requested today that I join Senator GARN in introducing their bill for the refinancing and restructuring of the Resolution Trust Corporation. We are introducing this bill at the request of the administration. Issues relating to the RTC must be addressed in the near future and the Banking Committee held 2 days of hearings last week to consider these matters. In the past, the Congress rejected the administration's request for a blank check for the RTC to deal with thrift resolutions because it wanted to keep closer oversight of how that agency was operating. Even the administration has now admitted that the RTC structure they originally requested needs reform. I plan to work with members of the committee to develop legislation to both refinance and reform the RTC this session.●

● Mr. GARN. Mr. President, today I join with the chairman of the Senate Banking Committee, Senator RIEGLE, to introduce, by request, the administration's bill for the refinancing and restructuring of the Resolution Trust Corporation. This bill was sent to the Senate on September 27, 1991, and would provide the funding necessary to continue, and hopefully complete, the process of closing down the failed savings and loans and keeping the funds of insured depositors safe and sound.

I hope that the Congress will take prompt action to provide the RTC with the resources it needs to get on with its job. While depositors are not at risk from delay, taxpayers are.

It should be no surprise to anyone here that additional funds are needed. When we provided the RTC with funding this spring, after a delay of several months, Congress explicitly rejected the administration's request for full funding to end the job and instead provided only enough funds to last into the fall. We all knew that by the end of September the RTC would be running out of funds. This was not what the administration wanted, since they asked for full funding, but this is what the Congress determined to do.

Since it was Congress that decided that the RTC would run out of funds, it is the duty of the Congress to act now, promptly, to provide the funds that we all knew back in the spring would be needed to finish the job.

Mr. President, I am a veteran of this process. That is why I may be more worried than others. I recall 5 years back, in 1986, a condition not unlike the present one. The attention of the Banking Committee was focused on major banking reform legislation. At the same time, however, the agency tasked with closing down insolvent savings and loans was out of money.

The Senate did the responsible thing and adopted legislation to recapitalize the Federal Savings and Loan Insurance Corporation, FSLIC, but that legislation, down until the last minute, became entangled in irrelevant issues and did not become law. FSLIC's funding crisis was allowed to grow worse. The savings and loan problem turned into the traumatic catastrophe from which the country has not yet emerged.

As then, so today I am concerned that the pursuit of irrelevant issues may keep the Congress from timely enactment of funding legislation.

Mr. President, lack of reform at the RTC will not serve as an excuse for inaction today. During hearings on the RTC this year before the Senate Banking Committee there have been calls from all quarters for someone to take charge of the RTC, to make decisions, to move the process forward. We have all urged that someone of stature, and with strong managerial experience in the private sector, be put in charge.

Despite all of the gloom-spreaders who thought that no such person could be found willing to take the job, the Board of Directors of the RTC earlier this month named Albert Casey, former head of American Airlines, as the new Chief Executive Officer of the RTC. It seems to me that the appointment of Albert Casey silences the critics who thought that no one of stature and experience could be found. Moreover, Mr. Casey, as CEO of the RTC, has been given enhanced powers to conduct the business of the RTC.

Mr. President, I believe that there is still time this fall to provide the funding required to let the RTC finish the job it has started. Whether we like the operation or not, we had better let the RTC finish it and close the suture rather than let the open wound fester.

There is no time left, however, for legislation that causes a major bureaucratic restructuring at the RTC, that moves boxes around as a substitute for action. The clock has run out for us to dabble in legislation that creates new hoops for the RTC to jump through, or that weighs the RTC down with new programs to administer. And there is no time left to pursue the agendas of those who would impose new special interest claims on the taxpayers' assets managed by the RTC.

The RTC has been slow to get on with its job. Everyone knows that. But now, just as the RTC is getting up a head of steam, is no time for a demonstration of just how slow the Congress can be to do what everyone knows must be done. No one wants to provide more funding for the RTC. We all wish that we could just stop where we are. But we have an obligation to millions of depositors. We cannot stop where we are, for the business of the RTC is to make good the Federal Government's obligations to protect the insured depositors of this country. No one wants to fail in that duty.

I applaud the steps taken by the administration and the RTC already to improve operations. While more needs to be done, more has been done since earlier this year when I shared with my colleagues a reluctance to give the RTC all the funds it sought without reforming its operations. I believe that this bill will make additional reforms that will speed up the process of closing down dead savings and loans and disposing of assets.

It is worth noting that this bill was worked out by both the Treasury Department and the FDIC and enjoys the strong support of former FDIC Chairman William Seidman.

Perhaps there are further changes that can be made at the edges, but I believe this to be a very positive bill, a strong effort. The administration has done its part. The administration has asked for resources, made important reforms and asked for authority to make others. The RTC stands ready to use those resources to get the job done.

It is now our turn to provide those resources. It will only be the Congress to blame if we leave off work this year with an unfunded RTC, left with no alternative but to give forbearance to dead savings and loans that should have been liquidated years ago, and which would have been liquidated but for lack of resources for the regulators to do so. We must not let that happen.

Mr. President, I ask unanimous consent that the text of the bill, along with a section-by-section analysis and other explanatory materials, together with statements by Deputy Treasury Secretary John Robson and former FDIC Chairman William Seidman, be included in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1896

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—RESOLUTION TRUST CORPORATION REFINANCING

SECTION 101. SHORT TITLE.

This title may be cited as the "Resolution Trust Corporation Refinancing Act of 1991".

SEC. 102. FUNDING FOR RESOLUTION OF FAILED THRIFTS.

Section 21A(i)(2) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(i)(2)) is amended by striking "$30,000,000,000" and inserting instead "$110,000,000,000".

SEC. 103. RTC WORKING CAPITAL BORROWING LIMIT.

Section 21A(j)(1) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(j)(1)) is amended to read as follows:

"(1) IN GENERAL.—The total amount of outstanding obligations of the Corporation may not exceed the lesser of—

"(A) $160,000,000,000; or

"(B) the amount that is equal to the Corporation's estimate of the fair market value of assets held by the Corporation.".

SEC. 104. APPOINTMENT BY DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.

Section 11(c)(6)(B) of the Federal Deposit Insurance Act (12 U.S.C. 1821(c)(6)(B)) is amended—

(a) in clause (i)—

(1) by striking "3-year"; and

(2) by inserting "and ending September 30, 1993" after "1989"; and

(b) in clause (ii), by striking "3-year".

SEC. 105. EXTENSION OF RESOLUTION TRUST CORPORATION DUTY.

Section 21A(b)(3)(A)(ii)(II) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(3)(A)(ii)(II)) is amended—

(a) by striking "within the 3-year" and inserting instead "during the"; and

(b) by inserting "and ending September 30, 1993" after "Act".

TITLE II—RESTRUCTURING OF THE OVERSIGHT BOARD AND THE RESOLUTION TRUST CORPORATION

SEC. 201. SHORT TITLE.

This title may be cited as the "Resolution Trust Corporation Restructuring Act of 1991".

SEC. 202. ACCOUNTABILITY OF OVERSIGHT BOARD.

Section 21A(a)(2) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(a)(2)) is amended—

(a) by striking "and be accountable for"; and

(b) by inserting "and shall be accountable for the duties assigned to the Oversight Board by this Act" after "(hereinafter referred to in this section as the 'Corporation')".

SEC. 203. RESTRUCTURING OF OVERSIGHT BOARD.

Section 21A(a)(3) of the Federal Home Loan Bank Act (12 U.S.C. 1441(a)(3)) is amended—

(a) in subparagraph (A), by striking "5 members" and inserting "5 voting members and 2 non-voting members. The non-voting members shall be the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation and the chief executive officer of the Corporation. The voting members shall be"; and

(b) in subparagraph (E) by striking "3 members" and inserting instead "3 voting members".

SEC. 204. OVERSIGHT BOARD DUTIES AND AUTHORITIES.

Section 21A(a)(6) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(a)(6)) is amended—

(a) by amending subparagraph (A) to read as follows:

"(A) To review overall strategies, policies, and goals established by the Corporation for its activities. After consultation with the Corporation, the Oversight Board may require the modification of any such overall strategies, policies, and goals. Overall strategies, policies, and goals shall include such items as—

"(i) overall strategies, policies, and goals for case resolutions, the management and disposition of assets, the use of private contractors, and the use of notes, guarantees or other obligations by the Corporation;

"(ii) overall financial goals, plans, and budgets; and

"(iii) restructuring agreements described in subsection (b)(11)(B).";

(b) in subparagraph (B), by inserting "financial plans, budgets, and" after "implementation";

(c) by amending subparagraph (C) to read as follows:

"(C) To review all rules, regulations, standards, policies, principles, procedures, guidelines, and statements that may be adopted or announced by the Corporation. After consultation with the Corporation, the Oversight Board may require the modification of any such rules, regulations, standards, policies, principles, procedures, guidelines, or statements that it deems materially inconsistent with overall strategies, policies, or goals established by or for the Corporation, or with the policies or purposes of applicable law, or with the efficient and economical discharge of the Corporation's duties, or with sound police policy. In all cases, the rules, regulations, standards, policies, principles, procedures, guidelines, and statements relating to the Corporation's powers and activities as a conservator or receiver shall be consistent with the Federal Deposit Insurance Act. The provisions of this subparagraph shall not apply to internal administrative policies and procedures (including but not limited to such matters as personnel practices, divisions and organization of staffing, delegations of authority, and practices respecting day-to-day administration of the Corporation's affairs) and determinations or actions described in paragraph (8) of this subsection."; and

(d) by adding at the end thereof the following new subparagraph:

"(K) To appoint (and at any time to remove) a person as chief executive officer of the Corporation, to appoint a person as a member of the Board of Directors of the Corporation pursuant to subsection (b)(8)(A)(iii) of this section, and to appoint the successors to each.".

SEC. 205. LIMITATION OF OVERSIGHT BOARD AUTHORITY.

Section 21A(a)(8)(A) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(a)(8)(A)) is amended—

(a) by striking "(i) involving" and inserting instead "involving (i)"; and

(b) by striking "provide general policies and procedures" and inserting instead "review overall strategies, policies, and goals established by the Corporation".

SEC. 206. DUTIES OF THE RESOLUTION TRUST CORPORATION.

Section 21A(b)(3) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(3)) is amended—

(a) by redesignating subparagraph (D) as subparagraph (E); and

(b) by inserting after subparagraph (C) the following new subparagraph:

"(D) To develop and establish overall strategies, policies, and goals for the Corporation, subject to review by the Oversight Board pursuant to subsection (a)(6)(A) of this section.".

SEC. 207. MANAGEMENT OF THE RESOLUTION TRUST CORPORATION.

Section 21A(b)(1)(C) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(1)(C)) is amended to read as follows:

"(C) MANAGEMENT BY BOARD OF DIRECTORS.—The Corporation shall be managed by or under the direction of its Board of Directors.".

SEC. 208. RESTRUCTURING OF THE RESOLUTION TRUST CORPORATION BOARD OF DIRECTORS.

Section 21A(b)(8) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(8)) is amended—

(a) by amending subparagraph (A) to read as follows:

"(A) IN GENERAL.—Except as provided in subsection (m), the Board of Directors of the Corporation shall consist of—

"(i) the members of the Board of Directors of the Federal Deposit Insurance Corporation;

"(ii) the chief executive officer of the Corporation; and

"(iii) one other person appointed by the Oversight Board after consultation with the Corporation, whose term of office shall be determined by the Oversight Board."; and

(b) by amending subparagraph (B) to read as follows:

(B) CHAIRPERSON.—The Corporation's chief executive officer shall serve as the Chairperson of the Board of Directors of the Corporation.".

SEC. 209. STAFF OF THE RESOLUTION TRUST CORPORATION; CHIEF EXECUTIVE OFFICER.

Section 21A(b)(9) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(9)) is amended—

(a) in subparagraph (A), by striking "Unless the Oversight Board exercises its authority under subsection (m), the" and inserting instead "The";

(b) in subparagraph (B), by amending clause (i) to read as follows:

"(i) FDIC.—The Corporation shall use employees (selected by the Corporation) of the Federal Deposit Insurance Corporation and the Federal Deposit Insurance Corporation shall provide such personnel to the Corporation for its use. Notwithstanding the foregoing, the Federal Deposit Insurance Corporation need not provide to the Corporation any employee of the Federal Deposit Insurance Corporation who was employed by the Federal Deposit Insurance Corporation on the date of enactment of the Resolution Trust Corporation Restructuring Act of 1991 and who had not theretofore been provided to the Corporation by the Federal Deposit Insurance Corporation. In addition to persons otherwise employed by the Federal Deposit Insurance Corporation, the Federal Deposit Insurance Corporation shall employ, and shall provide to the Corporation, such persons as the Corporation may request from time to time. Federal Deposit Insurance Corporation employees provided to the Corporation shall be subject to the direction and control of the Corporation and any of them may be returned to the Federal Deposit Insurance Corporation at any time by the Corporation in the discretion of the Corporation. The Corporation shall reimburse the Federal Deposit Insurance Corporation for the actual costs incurred in providing such employees. Any permanent employee of the Federal Deposit Insurance Corporation who was performing services on behalf of the Corporation immediately prior to the enactment of the Resolution Trust Corporation Restructuring Act of 1991 shall continue to be provided to the Corporation after enactment unless the chief executive officer determines the services of any such employee to be unnecessary, in which case such employee shall be returned to a similar position performing services on behalf of the Federal Deposit Insurance Corporation. In any ensuing reduction-in-force or reorganization within the Federal Deposit Insurance Corporation, any such employee shall compete with the same rights as any other Federal Deposit Insurance Corporation employee. The Corporation may use administrative services of the Federal Deposit Insurance Corporation and, if it does so, shall reimburse the Federal Deposit Insurance Corporation for the actual costs of providing such services."; and

(c) by adding at the end thereof the following new subparagraph:

"(C) CHIEF EXECUTIVE OFFICER.—The Corporation shall have a chief executive officer appointed by, and removable at any time by, the Oversight Board. The chief executive officer shall be an employee of the Federal Deposit Insurance Corporation provided to the Corporation for that purpose and shall receive such compensation and benefits as the Corporation's Board of Directors may determine from time to time in accordance with the laws and regulations applicable to the personnel practices of the Federal Deposit Insurance Corporation. The Corporation shall define such chief executive officer's duties and authorities in such manner, and the Corporation's Board of Directors shall provide the chief executive officer with such powers, as shall be adequate for the chief executive officer's efficient management and administration of the Corporation's day-to-day affairs. Among such duties, authorities, and powers shall be the duty, authority, and power, subject to the ultimate direction of the Corporation's Board of Directors (and subject to the exercise by the Oversight Board of its powers, duties, and authorities with respect to the Corporation):

"(i) To specify the duties, authorities, and powers of other officers of the Corporation and the duties, authorities, and powers of other persons, including employees of the Federal Deposit Insurance Corporation, acting on behalf of the Corporation.

"(ii) To make and modify staffing plans and organizational and management structures of the Corporation to most of the goals of this Act and other applicable laws.

"(iii) To direct all aspects of the Corporation's operations in a manner consistent with general practices of the private sector and with this Act and other applicable law.

"(iv) To modify and implement existing standards, policies, principles, procedures, guidelines, and statements in order to optimize the Corporation's performance, including but not limited to its performance in the disposition of assets.

"(v) To develop, adopt, and implement new standards, policies, principles, procedures, guidelines, and statements in order to optimize the Corporation's performance, including but not limited to its performance in the disposition of assets.

"(vi) To set and adjust the compensation and benefits of persons (other than the chief executive officer) acting on behalf of the Corporation in accordance with laws and regulations applicable to the personnel practices of the Federal Deposit Insurance Corporation.

"(vii) To choose employees of the Federal Deposit Insurance Corporation to be provided to the Corporation by the Federal Deposit Insurance Corporation, to request that the Federal Deposit Insurance Corporation employ specified persons for that purpose, and to return at any time to the Federal Deposit Insurance Corporation any such employee so provided.".

SEC. 210. RIGHTS OF EMPLOYEES UPON SUNSET.

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 is amended—

(a) in section 404(9)—

(1) by striking "section 21A(m)" and inserting instead "section 21A(o)";

(2) by striking "of such Corporation shall be transferred to" and inserting instead "of the Federal Deposit Insurance Corporation assigned to the Resolution Trust Corporation shall be reassigned to a position within"; and

(3) by striking "of this subsection" and inserting instead "of this section"; and

(b) in section 404(2)—

(1) by inserting "grade," after "status, tenure,"; and

(2) by inserting "or, if the employee is a temporary employee, separated in accordance with the terms of the appointment" after "cause".

SEC. 211. CONFORMING AND TECHNICAL AMENDMENTS.

Section 21A of the Federal Home Loan Bank Act (12 U.S.C. 1441a) is amended—

(a) in subsection (a)—

(1) in paragraph (9), by inserting "voting" after "preclude a";

(2) in paragraph (10)—

(A) by striking "establish and review the general policy of" and inserting instead "review overall strategies, policies, and goals established by"; and

(B) by striking "standards, policies, and procedures necessary to carry out" and inserting instead "matters as pertain to";

(b) in subsection (b)—

(1) in paragraph (3), by striking "and through the Federal Deposit Insurance Corporation (or any replacement authorized pursuant to subsection (m))";

(2) in paragraph (10)—

(A) by amending subparagraph (B) to read as follows:

"(B) To provide for a chief executive officer to be appointed by the Oversight Board."; and

(B) in subparagraph (N), by deleting "on behalf of the Federal Deposit Insurance Corporation, acting as exclusive manager"; and

(3) in paragraph (12)—

(A) in subparagraph (A), by amending the last sentence to read "The Corporation may establish overall strategies, policies, and goals for its activities and may issue such rules, regulations, standards, policies, principles, procedures, guidelines, and statements as the Corporation considers necessary or appropriate to carry out its duties."; and

(B) by amending subparagraph (B) to read as follows:

"(B) REVIEW ETC.—Such overall strategies, policies, and goals, and such rules, regulations, standards, policies, principles, procedures, guidelines, and statements—

"(i) shall be provided by the Corporation to the Oversight Board promptly or prior to publication or announcement to the extent practicable;

"(ii) shall be subject to the review of the Oversight Board as provided in subsection (a)(6)(A) (with respect to overall strategies, policies, and goals) or subsection (a)(6)(C) (with respect to rules, regulations, standards, policies, principles, procedures, guidelines, and statements); and

"(iii) shall be promulgated pursuant to subchapter II of chapter 5 of title 5, United States Code.";

(c) in subsection (m)—

(1) in paragraph (1)—

(A) by striking "Notwithstanding any other provision of law, the Oversight Board has the ultimate authority to supervise the Corporation and is ultimately accountable for the administration of the Corporation."; and

(B) by striking "Federal Deposit Insurance Corporation (or any replacement) from its position as exclusive manager of the Corporation and from all of its responsibilities

and authorities to act for the Corporation," and inserting instead "entire Board of Directors of the Corporation"; and

(2) in paragraph (3), by striking "Federal Deposit Insurance" and inserting "entire Board of Directors of the"; and

(d) by amending subsection (n) to read as follows:

"(n) OPERATION OF CORPORATION AFTER EXERCISE OF POWERS UNDER SUBSECTION (m).—If the Oversight Board exercises authority under subsection (m), the Oversight Board shall—

"(1) select a new Board of Directors and a new chief executive officer for the Corporation; and

"(2) provide to Congress, not later than 60 days before the removal of the Board of Directors of the Corporation, the identity of the new Board of Directors and the new chief executive officer selected pursuant to paragraph (1).".

SECTION BY SECTION ANALYSIS

To provide funding for the resolution of failed thrifts and working capital for the Resolution Trust Corporation, to restructure the Oversight Board and the Resolution Trust Corporation, and for other purposes.

TITLE I

Section 101 provides that this title may be cited as the "Resolution Trust Corporation Refinancing Act of 1991."

Section 102 would amend section 21A(i)(2) of the Federal Home Loan Bank Act to provide the Resolution Trust Corporation (RTC) with the $80 billion in additional loss funds to complete the resolution of failed thrifts.

Section 103 would amend section 21A(j)(1) of the Federal Home Loan Bank Act to enable the RTC to borrow necessary working capital funds from the Federal Financing Bank for the purpose of acquiring and carrying the assets of failed institutions. Both loss funds and working capital are necessary to resolve failed thrifts and protect depositors.

Section 104 would amend section 11(c)(6)(B) of the Federal Deposit Insurance Act to extend until September 30, 1993, the period during which the Office of Thrift Supervision (OTS) must appoint RTC as conservator or receiver of failed thrifts.

Section 105 is a conforming amendment to section 21A(b)(3)(A) of the Federal Home Loan Bank to extend until September 30, 1993, the period during which the RTC has the duty to act conservator or receiver of failed thrifts.

TITLE II

Section 201 provides that this title may be cited as the "Resolution Trust Corporation Restructuring Act of 1991."

Section 202 would limit the accountability of the Oversight Board (Board) to the performance of its duties as specified in section 21A of the Federal Home Loan Bank Act (12 U.S.C. 1441a).

Section 203 would revise the composition of the Board by adding, as nonvoting members, the Chairman of the Federal Deposit Insurance Corporation (FDIC) and the Chief Executive Officer (CEO) of the Resolution Trust Corporation (RTC).

Section 204 would amend section 21A of the Federal Home Loan Bank Act to authorize the RTC to develop and establish overall goals and policies and to authorize the Board to review and require modification of the goals and policies established by the RTC. Under this section, the Board would review RTC financial plans and budgets, policies, procedures, guidelines, rules and regulations and require their modification if the Board determines them to be materially inconsistent with the RTC's overall goals and policies, applicable law, the efficient discharge of the RTC's duties, or sound public policy. The Board would not have authority to require modification of RTC internal administrative policies or procedures, personnel, delegations of authority, or case-specific matters.

This section also would require RTC conservator and receivership policies to be consistent with those of the FDIC.

This section also authorizes the Board to appoint a CEO of the RTC and another private member to the RTC Board of Directors.

Section 205 makes conforming changes consistent with section 204.

Section 206 would transfer to the RTC, subject to Board review, authority to develop overall strategies, policies and goals.

Section 207 would transfer exclusive RTC management from the FDIC to the RTC Board of Directors.

Section 208 would restructure the RTC Board of Directors to include the Board of Directors of the FDIC, the CEO of the RTC, and one member selected by the Oversight Board in consultation with the RTC Board of Directors whose term is determined by the Oversight Board.

Section 209 would restructure RTC personnel provisions to provide (1) that RTC operations would be conducted by FDIC employees subject to the direction and supervision of the RTC, (2) that FDIC employees assigned to the RTC on the date of enactment may be reassigned to a similar position in the FDIC at any time, (3) that the RTC would fully reimburse FDIC for all costs associated with such employees, and (4) in the event of a reduction-in-force, FDIC employees assigned to the RTC and reassigned to the FDIC would have the same rights as other FDIC employees.

This section also would authorize the Board to appoint the CEO and to remove the CEO at any time. The CEO would be an employee of the FDIC, with compensation determined by the RTC Board in accordance with FDIC personnel practices. This section also provides the CEO with board executive authority.

Section 210 would clarify that FDIC employees assigned to the RTC at the time of RTC's termination are guaranteed positions within the FDIC in accordance with the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).

Section 211 would authorize the Board to remove the RTC Board of Directors for cause (as specified in FIRREA) and to appoint a new RTC Board of Directors. This section also makes several technical and conforming amendments.

THE SECRETARY OF THE TREASURY,
Washington, DC, September 27, 1991.

Hon. DAN QUAYLE,
President of the Senate, Washington, DC.

DEAR MR. PRESIDENT: Enclosed herewith are the Administration's legislative proposal to refinance the Resolution Trust Corporation and to restructure the Oversight Board and the Resolution Trust Corporation, and an analysis of the proposal.

The Administration strongly urges that the draft bill promptly be enacted by the Congress.

Title I of the draft bill, the "Resolution Trust Corporation Refinancing Act of 1991," would provide an additional appropriation of $80 billion in loss funds necessary for the Resolution Trust Corporation (RTC) to complete the resolution of failed thrifts, adjust the FIRREA note cap to allow RTC to borrow up to $160 billion, and extend for one year the period of time that the Office of Thrift Supervision (OTS) may transfer insolvent thrifts to the RTC for resolution.

To date, the Congress has provided $80 billion in loss funds for depositor protection: $50 billion in FIRREA and $30 billion in the RTC Funding Act of 1991. The RTC estimates that it will complete the resolution of approximately 569 thrifts by the end of the current fiscal year, and that by the end of October or shortly thereafter it will have used all the funds provided by the Congress. The Administration's request for an additional $80 billion is based on the conservative assumption that all thrifts currently designated by OTS as Group IV, IIIC, and IIIB would require resolution by the RTC. The Administration therefore asks that Congress provide the RTC with sufficient funds to complete these resolutions, which is estimated to require up to $80 billion.

By the end of this fiscal year, RTC expects to have $70 billion in working capital borrowings outstanding, an amount well within the borrowing limitation set by FIRREA. However, during 1992, RTC could exceed the $125 billion note cap limit, and we estimate that working capital needs could peak at $160 billion by mid-1993. After that time, we expect that the outstanding balances will begin to decline. Because both loss funds and working capital funds are required to complete resolutions, it is imperative that loss fund authorizations be matched with adequate working capital borrowings. Therefore, the Administration requests that Congress authorize RTC borrowing of $160 billion. Without such authority, the RTC may be forced to dump assets at fire-sale prices simply to stay under the current borrowing limit.

When enacted, FIRREA provided what was then estimated to be an adequate period of time—three years—during which OTS might appoint the RTC as conservator or receiver of thrift institutions then considered likely to fail. After August 8, 1992, when this appointment authority expires, conservator and receiver appointments would be made to the Federal Deposit Insurance Corporation, which manages the Savings Association Insurance Fund (SAIF). The Administration's proposal would extend that period to September 30, 1993, to accommodate the greater-that-anticipated number of savings institutions expected to fail.

RTC was designed to resolve the insolvent sector of the thrift industry. The intent of FIRREA was that SAIF would begin with a healthy industry. The Administration requests that Congress extend the period of time within which OTS may transfer thrifts to the RTC. This will allow orderly resolution of the remaining insolvent thrifts, enable SAIF to begin functioning with a clean slate as intended by the Congress, and remove any incentives to prematurely place institutions in conservatorship that might otherwise merge in the private sector.

In summary, title I will permit the RTC to complete its mission of resolving failed savings institutions that, by the end of this fiscal year, will have protected nearly 20 million deposit accounts. Prompt enactment of title I by the Congress will permit the uninterrupted fulfillment of the Government's commitment to depositors at the least cost to taxpayers.

Title II of the draft bill, the "Resolution Trust Corporation Restructuring Act of 1991," would transfer exclusive RTC manage-

ment from the FDIC to the RTC Board, and authorize the Oversight Board to appoint and remove a chief executive officer (CEO) of the RTC who would have broad authority over the day to day operations. In addition, it would revise the composition of the Oversight Board by adding, as nonvoting members, the Chairman of the FDIC and the CEO of the RTC. This title will enhance the abilities of the Board and the RTC to effectively and efficiently fulfill their intended missions.

An identical proposal has been transmitted to the Speaker of the House of Representatives.

Sincerely,

NICHOLAS F. BRADY.

STATEMENT OF HON. JOHN E. ROBSON, DEPUTY SECRETARY OF THE TREASURY

Chairman Dixon and members of the Subcommittee, I am pleased to respond to your request to discuss the Administration's proposal to restructure the RTC. Accompanying me is Peter Monroe, President of the Oversight Board.

The Administration's restructuring proposal is contained in the RTC Refinancing and Restructuring Act of 1991, which Secretary Brady submitted on behalf of the Administration to the Speaker of the House and President of the Senate on September 27, with a request for its prompt consideration. It has been introduced in the Senate.

The RTC Refinancing and Restructuring Act of 1991 would provide $80 billion in loss funds, which we estimate will be sufficient to complete the unprecedented jobs of the savings and loan cleanup and the protection of insured depositors. It would provide additional working capital by raising the obligation limitation to $160 billion, and it would extend to September 30, 1993, the Office of Thrift Supervision's authority to transfer insolvent thrists to the RTC for closure.

Tc create the framework for our discussion of restructuring, I think it important to review the RTC's progress to date—where it stands in an effort that must, by law, end in 1996.

At September 30 this year the RTC had saved the accounts of over 18 million depositors in thrifts in 44 states. The average balance of those 18 million accounts in just over $9,000. Because it has kept depositors' accounts whole and done so without delay RTC has helped avert a crisis of confidence in our banking system.

At September 30 the RTC had seized 660 thrifts and had resolved 563 of them—one every 33 hours. It plans during fiscal year 1992 to resolve a total of 233 institutions, if it promptly receives the funds it needs to continue its work.

My point is that the RTC is within sight of completing the task of closing insolvent institutions and removing them from the thrift industry.

The great task now confronting the RTC is the disposition of a huge amount of hard-to-sell assets—the investments of hundreds of defunct S&Ls. Even here there is progress to report. As of August 31, 1991, the RTC had seized $341 billion of assets. The net book value of sales and principal collections totaled $182 billion, leaving $159 billion of assets in inventory.

Recognizing that the RTC has ended the phase during which its mission has mainly been resolution of institutions, and entered the phase of its short life during which it must concentrate on the position of assets, the Oversight Board in June began with former FDIC Chairman Seidman a search for a new full-time Chief Executive Officer to run the RTC.

We were able to recruit a highly qualified individual, and last Thursday the FDIC, in its capacity under FIRREA as exclusive manager of the RTC, appointed as RTC CEO a seasoned business executive with a record of outstanding achievement in managing complex organizations. I am delighted that Albert V. Casey will appear here today in this new capacity.

With the appointment of Mr. Casey as CEO and the delegation to him of sufficient powers to run the RTC effectively, the Administration believes it has taken the most important single action necessary to solve the operational problems that have plagued the RTC's asset disposition efforts.

Some argue, however, that the RTC's problems stem not from operations or management but from its structure, notably the dual board structure created by FIRREA. We do not agree, neither does the Chairman of the RTC National Advisory Board, Philip Searle, who stated before this Subcommittee on June 19 that the structure is not the cause of RTC's operational problems.

Simply put, the current structure makes the RTC Board responsible for operations, and the Oversight Board responsible for funding, policy, and evaluation. The Administration believes that the logic of this division of responsibility remains valid for several reasons:

First is the RTC's control over a tremendous expenditure of public funds. An operational agency that can spend up to $160 billion in taxpayer dollars, and borrow as much as $160 billion more, should have independent oversight by the Administration which is responsible for the national budget. This need was recognized in the cases of the Chrysler and Lockheed loan guarantees. In both instances Congress created an oversight board to monitor the use of public monies.

Second is the need to permit the RTC—its CEO and Board—to focus wholly on their giant operational task, while permitting the separate Oversight Board to monitor overall policy, performance and financial matters.

Third is the need for political accountability. To entrust the cleanup to an indpendent board dominated by private sector members would be bad public policy. Retaining a separate Oversight Board maintains the linkage of the cleanup to the Administration.

The necessity of an independent oversight entity has been consistently stated by the General Accounting Office. Before the House Banking Committee on February 20, the Comptroller General said:

"I think you need an oversight board to monitor how the operation is going . . . I don't think just having GAO and auditors coming in [is enough], I think you need an oversight board with . . . staff monitoring that."

Most recently, in letters to Senator Garn and Congressman Wylie on October 8, the GAO reiterated its views on the structure of the cleanup. I have attached a copy of this letter and ask that it be included in the record. It should be useful to the Subcommittee because it makes three important points that are directly relevant to today's discussion: first, it calls for a strong CEO; second, it calls for "strong oversight by an entity independent of the day-to-day operations of the RTC;" third, it asks that any restructuring be done in such a manner as to minimize disruption.

The retructuring contained in the Administration's proposed RTC Refinancing Act of 1991, in combination with the appointment of a new Chief Executive Office for the RTC, fulfills each of these objectives. It creates a strong CEO with statutory powers to manage the RTC; it provides for independent oversight by retaining the Oversight Board and more sharply defining its powers to cover essential oversight actions and to keep it out of operations; and by building on the existing structure and providing protection for RTC employees, it will not result in disruption in an effort that is now in mid-course and making substantial progress.

The proposal is the result of a collaboration between the Oversight Board and Chairman Seidman. Both believe that it makes useful changes in the current structure without impeding the growing momentum of the cleanup effort. Mr. Casey is of course familiar with the current structure and with our proposal and feels confident he can work within either.

Against this background let me now review the main elements of the proposal.

First, it places political accountability for the cleanup squarely in the Oversight Board. Mr. Chairman, at the full Committee's June 11 hearing you expressed frustration with an apparent lack of accountability when you asked the Comptroller General "can you not get someone in here we can blame later?" I would observe that Congress has so far had no trouble blaming the Administration and the Oversight Board. But this proposal makes it clear that political responsibility for the cleanup rests with the Board. That is partly because under the proposal the CEO is hired and fired by the Board.

As Bill Seidman has pointed out, the Oversight Board in this proposal becomes much more like a corporate board with the power to remove the CEO, and the power to review and modify, but not to establish, policies for the RTC. This last point is important. The Oversight Board now has the power to initiate policies for the RTC. Under our proposal, the Board may only review and modify RTC policies. And such Board review is after-the-fact. It does not slow RTC or require advance approval of its policies.

Second, it creates, as I said earlier, a strong CEO giving him full powers in law to operate the RTC. This, Mr. Chairman should respond to your bill, S. 1425, requiring appointment of a strong CEO, and your letter to the Washington Post on August 1 in which you call for RTC leadership by an experienced CEO. As you asked, our proposal gives him the authority to make decisions and make the RTC work.

In addition to the grant of managerial powers, our proposal gives the CEO more authority than currently by making him Chairman of the RTC Board. You may well ask why it is necessary to retain the RTC Board. As Bill Seidman has pointed out, the structure we propose retains the RTC Board as the body responsible for management of operations, much like the operating committees that exist in many corporations. When you consider the magnitude of the decisions the RTC CEO must regularly make, you can understand the desirability for a group of experienced individuals to help with them. This operational role is similar to that which the RTC Board now plays.

Our proposal does not call for Senate confirmation of the CEO. We do not believe this is necessary because he reports to the Oversight Board which consists of five officers confirmed by the Senate. We do not believe it is desirable because it would create delay. We now have a full qualified CEO in place. Under our proposal he can continue to serve in the new structure without interruption

but with enhanced powers. To require confirmation would almost certainly have the effect of inhibiting his decision-making.

Third, the proposal improves coordination and communication between the operating and oversight function by making the CEO a member of the Oversight Board. In addition the FDIC Chairman is made a member of the Board in recognition of the fact that the FDIC will continue to supply personnel and support for the RTC, a temporary agency.

Fourth, our proposal will free the FDIC from the FIRREA-mandated responsibility of exclusive manager of the RTC and permit it to concentrate on the banking industry.

However, the proposal retains a relationship between FDIC and RTC in which all RTC personnel are maintained as FDIC employees. This arrangement avoids the creation of a permanent RTC bureaucracy and looks forward to the termination of the RTC in 1996 by providing for the return of nontemporary RTC employees to the FDIC. Thus the proposal avoids creating a situation in which FDIC employees currently detailed to the RTC will want to leave the RTC now.

Fifth, the proposal avoids disruption. It builds on the current structure. It makes a real improvement in RTC's operations but avoids creating havoc in an enterprise that is well under way.

Finally, the proposal retains the oversight function that the Administration strongly believes must continue to be an essential component of the cleanup structure.

Mr. Chairman, we believe we have fashioned, in cooperation with Bill Seidman, a proposal which responds, in the ways I have outlined above, to the concerns you and other members of Congress have expressed. It is a proposal that at the same time meets the criteria we and the General Accounting Office have established.

As Senator Garn and others have acknowledged, it would be counterproductive to enact a structure neither the Administration nor RTC want or believe is suitable to the task.

There will be other witnesses today who have had considerable experience in government organization. So have I, and with major private sector organizations as well. These witnesses, based on past statements, may make the point that the current structure seems clumsy and that our proposal does not go far enough. I have watched this organization closely since its inception. Certainly there have been problems: not to have expected problems in an undertaking of this magnitude and complexity would have been unrealistic. But organizational structures which perhaps meet academic criteria may not fill the real needs of an organization in the political context in which it operates, an organization that is moreover well down the path toward fulfilling its mission within a relatively short time frame. As the GAO points out in the attached letter, "careful attention must be given to avoiding changes or delays that would be counterproductive to the progress RTC is making in improving both its operations and asset disposition strategies."

In conclusion, Mr. Chairman and subcommittee members, I ask for your support for a restructuring proposal which we believe improves RTC operations and responds to Congressional concerns. On behalf of the Administration I express the earnest hope that the Committee will move quickly to report our refunding request and with it, our reorganization proposal. I look forward to responding to your questions.

GENERAL ACCOUNTING OFFICE,
Washington, DC, October 8, 1991.

Hon. JAKE GARN,
Ranking Minority Member, Committee on Banking, Housing, and Urban Affairs, U.S. Senate.

DEAR SENATOR GARN: Thank you for your letter requesting our views on streamlining and restructuring RTC. Last February, in testimony before the House Committee on Banking, Finance and Urban Affairs we raised the need to consider separating the leadership of FDIC and RTC because of the formidable tasks facing both agencies. We said it was time to consider a Chief Executive Officer (CEO) for RTC. In testimony on September 12, 1991, the Administration agreed that a separate CEO is needed for RTC.

As you know, a variety of proposals have been advanced by different parties aimed at restructuring RTC. We believe there are at least two organizational concepts we would like to see included in any restructuring proposal enacted by Congress.

The first is identifying a CEO responsible for the day-to-day operations of RTC. As I mentioned, this concept has been supported by the Administration in testimony and is already embodied in the proposals put forward to date. This individual should be skilled in the business of asset management and disposition and have sufficient latitude to direct RTC in meeting the challenges it faces. It is also important that sthe CEO build a strong top management team because one person cannot effectively run an organization as large and diverse as RTC.

The second concept is the need for strong oversight by an entity independent of the day-to-day operations of the RTC. Special attention is needed because of the magnitude of both the overall operations of RTC and the funding required. An oversight board meets this criteria and could help assure that the effort does not get off track.

In closing, let me emphasize that in pursuing restructuring, careful attention needs to be given to avoiding changes or delays that would be counterproductive to the progress RTC is making in improving both its operations and asset disposition strategies.

Sincerely yours,

GASTON L. GIANNI, Jr.,
Associate Director,
Federal Management Issues.

TESTIMONY OF L. WILLIAM SEIDMAN ON RTC STRUCTURE ISSUES

Mr. Chairman and Members of the Committee, thank you for the opportunity to appear before you in my new role as a private citizen and to give you my views on the Administration's proposal for restructure of the RTC.

I can summarize by saying that the RTC restructure proposal, which was jointly drafted by the Administration and the FDIC–RTC, is an important and desirable step forward in the administration of the S&L cleanup process.

Briefly, it makes the following changes:

(1) It creates a RTC CEO who chairs the RTC Board and is a member of the RTC Oversight Board;

(2) It removes the Independent FDIC Board from its responsibility as "exclusive manager" of the operations of the RTC;

(3) It provides the RTC Oversight Board with the power to appoint and remove both the new RTC CEO and the reconstituted RTC Board;

(4) It reduces the activities of the RTC Oversight Board to those normally associated with "oversight" and places powers normally associated with a CEO in that position.

Two questions may be asked about this restructure:

(1) Does it change enough to achieve the desired efficiency?

(2) Does it change too much and thus set back the progress currently being made by the RTC?

The answer to the first question is "yes". The restructure will bring about the desired improvement in operations to the RTC because it:

(1) Creates a real chief executive officer—a position that does not exist today:

(2) Eliminates the dual independent boards. The RTC Board will no longer be independent. It will be the equivalent of an operating board of the RTC Oversight Board subject to removal at their request;

(3) Provides oversight by the RTC Oversight Board but removes the problem currently existing with respect to separating day to day operations from overall management;

(4) Coordinates the RTC and its Oversight Board by putting the CEO and FDIC Chairman on both boards, thus substantially eliminating the potential for conflict.

In summary it does what is necessary to improve the structure. With clear lines of authority, it provides a more efficient basis for operation.

The answer to the second question is "no". The new structure will not cause delays or slow the RTC clean-up because it:

(1) Makes no changes in personnel except to create the new CEO position and perhaps to cut back on the size of the Oversight Board staff commensurate with its reduced duties. This will improve efficiency immediately.

(2) Allows the CEO to begin operation at once with full authority and responsibility and with separate RTC personnel already in place.

(3) Keeps the Oversight Board to deal with funding issues and over-all coordination in the area of administration policies. At the same time it cuts back the Board's operational duties and most importantly, the time required from the very busy Board members.

(4) Requires nothing to be put "on hold" since the new CEO will be acting as an RTC employee and consultant to the Oversight Board until the law is put in place.

In summary, there should be no loss of momentum at the RTC with the new structure, and there will be considerable gain in efficiency.

I believe the RTC is ready to go forward on its own—independent of the FDIC, which certainly has more than enough to do in its own areas of responsibility. The change will allow immediately improved efficiency for both the RTC and the FDIC.

Thank you for your attention.●

By Mr. DOMENICI:

S. 1897. A bill to improve supervision and regulation of Government sponsored enterprises; to the Committee on Banking, Housing and Urban Affairs.

GOVERNMENT SPONSORED ENTERPRISE REGULATOR ACT OF 1991

● Mr. DOMENICI. Mr. President, I am here on the floor today to introduce a bill that will establish an independent division at the Treasury Department to monitor the safety and soundness of six Government sponsored enterprises [GSE].

While none of the GSE's currently needed a bailout, it is not too far fetched to imagine one of these $400 billion entities failing. Currently, we only loosely monitor GSE's for safety and soundness.

We need to better watch GSE's to ensure that the taxpayer is not faced with the tab for another savings and loan crisis. It is the comparison to the saving and loan crisis, and the fear of unexpected costs in the billions, that has initiated the need for this legislation.

BUDGET

I am not introducing this bill out of context. The Budget Enforcement Act of 1990 requires the committees of jurisdiction to report out legislation by September 15, 1991, to strengthen the safety and soundness of GSE's.

In the last year's budget summit it became apparent that GSE's shared similar budget characteristics to deposit insurance. The Government's liability commitment with deposit insurance is an unanticipated costs and not easily projected in the budget—until the costs come due. Under the current system, GSE's would operate in the same manner.

GSE's are a hidden contingent liability. They are offbudget entities which are not included in the deficit or the budget, yet they carry with them the status of implied Government backing.

While it is unclear how implied backing is financially defined, the market has taken the view that if GSE's get into financial trouble, Uncle Sam's deep pockets would bail them out.

While these entities are financially solvent today, they need to be watched more closely so the taxpayers are not blind-sided with unexpected costs.

HOUSE BILL

While I have problems with the House Banking Committee's passed bill, at least the committee meet the September 15 reporting deadline as required in the Budget Act. The Senate Banking Committee hasn't even scheduled a markup.

I find it troubling that the House bill places the GSE regulator for Fannie Mae and Freddie Mac at HUD.

HUD does not have the technical expertise or the understanding of finance to properly implement a safety and soundness program for companies with assets worth more than $700 billion.

HUD recently released regulations that focused almost entirely on housing, when the focus was supposed to be financial soundness. The regulations are 50 pages long, in which 47 pages focus on housing and 3 on safety and soundness.

These regulations are worrisome—especially if they are a preview of what HUD would be like as a safety and soundness regulator. For example, HUD wants Fannie Mae and Feddie Mac to pool inner-city mortgages regardless if the requirement would weaken credit standards and erode soundness.

HUD will be tempted to change the mission of GSE's to promote housing, regardless if it means making bad business decisions.

The House bill will take these successful entities, tie their hands through their public policy mission, and make them unprofitable. I hope the Senate bill does not proceed in this direction.

We don't want to cause financial problems by developing legislation that threatens safety and soundness. The need for this legislation was prompted by the potential future exposure GSE's present to the taxpayer, not the need to change their public policy mission.

REGULATORY STRUCTURE

The most important aspect of this legislation is to establish a regulatory structure that will be able to anticipate and prevent future financial problems. The House bill, which places HUD as the regulator, is a flawed approach.

I am proposing here to place the GSE regulator at Treasury because it has the technical expertise and understanding of finance to implement stress tests and capital requirements.

The GSE department at Treasury will have a narrow mission of evaluating safety and soundness. Program regulation will be maintained with program experts at HUD for Fannie Mae and Freddie Mac, the Federal Housing Finance Board for the Federal Home Loan Bank System, the Farm Credit Administration for the Farm Credit System and Farmer Mac, and the Education Department for Sallie Mae.

Before the program regulator can issue regulations, the GSE department will evaluate the regulations to determine if they are consistent with ensuring safety and soundness. The GSE department will only be able to withhold approval for regulations if the regulations threaten soundness.

The GSE department at Treasury will focus on protecting the taxpayer, not expanding the public policy mission. The Treasury will be more inclined to make difficult decisions that conflict with the GSE mission than program regulators.

The proposal ensures that one voice is speaking, accountable, and reporting to Congress on the financial soundness of all GSE's and the status of the secondary market.

There is not need to create an intrusive regulator. These GSE's need to be monitored and watched closely, but we don't need to change them fundamentally.

CAPITAL

While I have problems with the House bill on their regulatory structure and housing title, the bill is heading in the right direction on increasing capital requirements and the development of stress tests.

While seven different studies indicate Fannie Mae and Freddie Mac do not pose an imminent threat to taxpayers, all the studies emphasize that their capital levels are low relative to risk.

The time to require GSE's to increase capital is when they are healthy. Once an entity shows stress, requiring them to increase capital only makes matters worse. We need to establish capital requirements now while these companies appear to be strong.

While the focus of the Treasury report is on capital levels, there are other indicators a regulator should look at including management risk, operational risk, and internal controls.

THE NEED TO ACT

If the GSE's are so profitable, what's the big deal or the need for legislation? Because it wasn't always so, and may not always be.

While the GSE's have been very profitable the last few years, as recently as 1985, Fannie Mae was losing enormous amounts of money and was in serious trouble. In fact, Fannie Mae was losing nearly a million dollars a day in the early 1980's and on a market-value basis was clearly insolvent. Essentially, Fannie Mae rolled the dice and bet on interest rate changes and won.

More recently, the Farm Credit System had to be bailed out after it followed a policy of mispricing its portfolio. It was not as lucky as Fannie Mae.

The Treasury contracted with Standard and Poor's [S&P] to provide ratings of GSE's absent any Federal backing. Fannie Mae rated at A− and Farm Credit System rated BB, which are low or below investment grade ratings. Profit level doesn't always correlate into strength to absorb downturns or unexpected losses.

While these companies are profitable today and we are not responding to a financial crisis, there is exposure to the taxpayer in the future. Leaving them unregulated and unmonitored would be irresponsible.

In concluding, we need to recognize how unique these Government chartered entities are. Most would think GSE's are oxymorons because they are Government creations fulfilling a public purpose, while earning profits. I think this combination is great, and we need to ensure that they keep on growing and remain financially sound.●

By Mr. DASCHLE (for himself, Mr. PRESSLER, Mr. INOUYE, Mr. MCCAIN, Mr. SIMON, Mr. BURDICK, and Mr. MURKOWSKI):

S.J. Res. 222. Joint resolution to designate 1992 as the "Year of Reconciliation Between American Indians and non-Indians"; to the Committee on the Judiciary.

YEAR OF RECONCILIATION BETWEEN AMERICAN INDIANS AND NON-INDIANS

Mr. DASCHLE. Mr. President, 500 years ago some of our forefathers first

set foot upon this continent. The quincentennial anniversary of the arrival of Christopher Columbus celebrates that event.

But 500 years ago, Mr. President, the forefathers of others among us had already been on this continent for thousands of years. It was their home.

The 500 years from then until now have chronicled the taking of a continent by one people from another. It is history that cannot be reversed. It is history that has seen the emergence of a wonderful, proud, and powerful nation in the world most of us call new.

But for those who do not call this continent new, for the American Indian, it has been a very different history. Their ranks have been decimated by the diseases of the new worlders; their lands have been taken and their cultures virtually destroyed. The wrongs have been many, yet through such adversity, native American languages, customs, and traditional values of fortitude, bravery, generosity, and wisdom have endured. These tools of survival are now supplying new strength, determination, and hope for a generation preparing to embrace the 21st century.

In South Dakota, where these wrongs and resentments are so sharply etched, we are fortunate indeed to have one Indian journalist and one Governor willing to take a chance. Tim Giago, the publisher of the Lakota Times, has gone from Pine Ridge, SD, to Harvard University and back again on the strength of his mind and the power of his pen. He has built the most respected news organization in Indian country. His thinking about Indian issues and the problems that divide his community from non-Indian America command attention from coast to coast.

In 1990, Mr. Giago conceived a modest idea that has begun an important process in my State. Why, he asked our Governor, should we not begin our second 100 years as a State with a year of reconciliation between Indian and non-Indian peoples? Nobody pretended the designation of a year of reconciliation would change our world in South Dakota. But Governor George Mickelson agreed it might at least begin to develop the trust, the respect, and understanding without which progress between peoples cannot be made.

Mr. Giago and the Governor were right. There have been setbacks and shouting matches. But the year of reconciliation in South Dakota has become a century of reconciliation. We have committed ourselves to finding in our second 100 years the understanding and justice between American Indians and non-Indians that too often eluded us during the century just passed.

This year Tim Giago asked our Governor and our congressional delegation the same question that led to South Dakota's reconciliation program—1992 is the 500th anniversary of the discovery of America by Christopher Columbus. Why not try nationwide to see whether a year of reconciliation might help kick off the second 500 years since Columbus more positively for Indians than the first?

Congressman TIM JOHNSON'S reply was "yes." He has already introduced in the House of Representatives the joint resolution we offer today.

Senator LARRY PRESSLER's reply was "yes." He has spoken often in this Chamber of the history and problems of the Lakota Sioux and is the coauthor of this joint resolution.

My Chairman and vice-chairman of the Select Committee on Indian Affairs, Senator DANIEL INOUYE and Senator JOHN MCCAIN, agree as well. Their efforts on behalf of American Indian people are well known in this Chamber, and the strength their names lend to our joint resolution is deeply appreciated.

This joint resolution designates 1992 as the "Year of Reconciliation Between American Indians and non-Indians." I hope and expect it will receive the unanimous support of my colleagues and ask unanimous consent that the full text of the resolution be printed in the RECORD.

There being no objection, the joint resolution was ordered to be printed in the RECORD, as follows:

S.J. RES. 222

Whereas 1992 will be recognized as the quincentennial anniversary of the arrival of Christopher Columbus to this continent;

Whereas this 500th anniversary offers an opportunity for the United States to honor the indigenous peoples of this continent;

Whereas strife between American Indian and non-Indian cultures is of grave concern to the people of the United States;

Whereas in the past, improvement in cultural understanding has been achieved by individuals who have striven to understand the differences between cultures and to educate others;

Whereas a national effort to develop trust and respect between American Indians and non-Indians must include participation from the private and public sectors, churches and church associations, the Federal Government, Tribal governments and State governments, individuals, communities, and community organizations;

Whereas mutual trust and respect provides a sound basis for constructive change, given a shared commitment to achieving the goals of equal opportunity, social justice and economic prosperity; and

Whereas the celebration of our cultural differences can lead to a new respect for American Indians and their culture among non-Indians: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That 1992 is designated as the "Year of Reconciliation Between American Indians and non-Indians". The President is authorized and requested to issue a proclamation calling upon the people of the United States, both Indian and non-Indian, to lay aside fears and mistrust of one another, to build friendships, to join together and take part in shared cultural activities, and to strive towards mutual respect and understanding.

ADDITIONAL COSPONSORS

S. 20

At the request of Mr. ROTH, the name of the Senator from Colorado [Mr. BROWN] was added as a cosponsor of S. 20, a bill to provide for the establishment and evaluation of performance standards and goals for expenditures in the Federal budget, and for other purposes.

S. 152

At the request of Mr. COATS, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of S. 152, a bill to amend the Internal Revenue Code of 1986 to increase the personal exemption to $4,000.

S. 359

At the request of Mr. BOREN, the name of the Senator from Wyoming [Mr. WALLOP] was added as a cosponsor of S. 359, a bill to amend the Internal Revenue Code of 1986 to provide that charitable contributions of appreciated property will not be treated as an item of tax preference.

S. 581

At the request of Mr. BOREN, the name of the Senator from Alabama [Mr. HEFLIN] was added as a cosponsor of S. 581, a bill to amend the Internal Revenue Code of 1986 to provide for a permanent extension of the targeted jobs credit, and for other purposes.

S. 747

At the request of Mr. PRYOR, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of S. 747, a bill to amend the Internal Revenue Code of 1986 to clarify portions of the Code relating to church pension benefit plans, to modify certain provisions relating to participants in such plans, to reduce the complexity of and to bring workable consistency to the applicable rules, to promote retirement savings and benefits, and for other purposes.

S. 844

At the request of Mr. DOMENICI, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of S. 844, a bill to provide for the minting and circulation of one dollar coins.

S. 1401

At the request of Mr. PRESSLER, the name of the Senator from Idaho [Mr. CRAIG] was added as a cosponsor of S. 1401, a bill to amend the Internal Revenue Code of 1986 to allow a deduction for amounts paid by a health care professional as interest on student loans if the professional agrees to practice medicine for at least 2 years in a rural community.

S. 1505

At the request of Mr. DECONCINI, the names of the Senator from California

[Mr. CRANSTON] and the Senator from West Virginia [Mr. ROCKEFELLER] were added as cosponsors of S. 1505, a bill to amend the law relating to the Martin Luther King, Jr. Federal Holiday Commission.

S. 1533

At the request of Mr. BRYAN, the name of the Senator from Hawaii[Mr. AKAKA] was added as a cosponsor of S. 1533, a bill to establish a statute of limitations for private rights of action arising from a violation of the Securities Exchange Act of 1934.

S. 1606

At the request of Mr. DURENBERGER, the name of the Senator from Connecticut [Mr. LIEBERMAN] was added as a cosponsor of S. 1606, a bill to establish a demonstration program that encourages State educational agencies to assist teachers, parents, and communities in establishing new public schools, and for other purposes.

S. 1623

At the request of Mr. DECONCINI, the names of the Senator from Rhode Island [Mr. PELL], and the Senator from California [Mr. SEYMOUR] were added as cosponsors of S. 1623, a bill to amend title 17, United States Code, to implement a royalty payment system and a serial copy management system for digital audio recording, to prohibit certain copyright infringement actions, and for other purposes.

S. 1650

At the request of Mr. KERRY, the name of the Senator from Alabama [Mr. SHELBY] was added as a cosponsor of S. 1650, a bill to revise the national flood insurance program to provide for mitigation of potential flood damages and management of coastal erosion, ensure the financial soundness of the program, and increase compliance with the mandatory purchase requirement, and for other purposes.

S. 1673

At the request of Mr. HEFLIN, the name of the Senator from Oklahoma [Mr. BOREN] was added as a cosponsor of S. 1673, a bill to improve the Federal justices and judges survivors' annuities program, and for other purposes.

S. 1738

At the request of Mr. DASCHLE, the names of the Senator from Iowa [Mr. HARKIN], the Senator from Nebraska [Mr. KERREY], and the Senator from Wisconsin [Mr. KOHL] were added as cosponsors of S. 1738, a bill to prohibit imports into the United States of meat products from the European Community until certain unfair trade barriers are removed, and for other purposes.

S. 1741

At the request of Mr. ROBB, the name of the Senator from Alaska [Mr. MURKOWSKI] was added as a cosponsor of S. 1741, a bill to provide for approval of a license for telephone communications between the United States and Vietnam.

S. 1786

At the request of Mr. BAUCUS, the name of the Senator from New Hampshire [Mr. SMITH] was added as a cosponsor of S. 1786, a bill to amend the Internal Revenue Code of 1986 to more accurately codify the depreciable life of semiconductor manufacturing equipment.

S. 1810

At the request of Mr. ROCKEFELLER, the names of the Senator from Montana [Mr. BAUCUS], the Senator from Alabama [Mr. HEFLIN], the Senator from Connecticut [Mr. DODD], the Senator from Illinois [Mr. SIMON], the Senator from California [Mr. CRANSTON], and the Senator from North Carolina [Mr. SANFORD] were added as cosponsors of S. 1810, a bill to amend title XVIII of the Social Security Act to provide for corrections with respect to the implementation of reform of payments to physicians under the Medicare program, and for other purposes.

SENATE JOINT RESOLUTION 195

At the request of Mr. DECONCINI, the name of the Senator from Michigan [Mr. RIEGLE] was added as a cosponsor of Senate Joint Resolution 195, a joint resolution providing that the United States should support the Armenian people to achieve freedom and independence.

SENATE JOINT RESOLUTION 206

At the request of Mr. RIEGLE, the name of the Senator from Virginia [Mr. WARNER] was added as a cosponsor of Senate Joint Resolution 206, a joint resolution to designate November 16, 1991, as "Dutch-American Heritage Day."

SENATE JOINT RESOLUTION 211

At the request of Mr. D'AMATO, the name of the Senator from New Jersey [Mr. BRADLEY] was added as a cosponsor of Senate Joint Resolution 211, a joint resolution designating October 1991 as "Italian-American Heritage and Culture Month."

SENATE JOINT RESOLUTION 217

At the request of Mr. HATFIELD, the names of the Senator from North Carolina [Mr. HELMS], the Senator from Texas [Mr. GRAMM], the Senator from Virginia [Mr. WARNER], the Senator from Texas [Mr. BENTSEN], the Senator from South Carolina [Mr. THURMOND], the Senator from Utah [Mr. HATCH], the Senator from Rhode Island [Mr. CHAFEE], the Senator from North Dakota [Mr. CONRAD], the Senator from Arkansas [Mr. BUMPERS], the Senator from Colorado [Mr. BROWN], the Senator from South Dakota [Mr. PRESSLER], the Senator from Louisiana [Mr. JOHNSTON], and the Senator from Pennsylvania [Mr. SPECTER] were added as cosponsors of Senate Joint Resolution 217, a joint resolution to authorize and request the President to proclaim 1992 as the "Year of the American Indian."

SENATE CONCURRENT RESOLUTION 57

At the request of Mr. BOREN, the names of the Senator from Oklahoma [Mr. NICKLES], and the Senator from Florida [Mr. GRAHAM] were added as cosponsors of Senate Concurrent Resolution 57, a concurrent resolution to establish a Joint Committee on the Organization of Congress.

SENATE CONCURRENT RESOLUTION 70

At the request of Mr. SANFORD, the name of the Senator from Alabama [Mr. HEFLIN] was added as a cosponsor of Senate Concurrent Resolution 70, a concurrent resolution to express the sense of the Congress with respect to the support of the United States for the protection of the African elephant.

SENATE RESOLUTION 201

At the request of Mr. FORD, his name was added as a cosponsor of Senate Resolution 201, a resolution to express the sense of the Senate regarding enforcement of the oilseeds GATT panel ruling against the European Community.

At the request of Mr. DANFORTH, the names of the Senator from Michigan [Mr. LEVIN], the Senator from Minnesota [Mr. WELLSTONE], the Senator from Wisconsin [Mr. KASTEN], the Senator from South Dakota [Mr. PRESSLER], the Senator from Florida [Mr. MACK], and the Senator from Nebraska [Mr. EXON] were added as cosponsors of Senate Resolution 201, supra.

SENATE RESOLUTION 204

At the request of Mr. D'AMATO, the name of the Senator from Wisconsin [Mr. KASTEN] was added as a cosponsor of Senate Resolution 204, a resolution expressing the sense of the Senate that the United States should pursue discussions at the upcoming Middle East Peace Conference regarding the Syrian connection to terrorism.

SENATE RESOLUTION 207

At the request of Mr. ROTH, the name of the Senator from Connecticut [Mr. LIEBERMAN] was added as a cosponsor of Senate Resolution 207, a resolution expressing the sense of the Senate regarding the recommendations of the United Nations study group on international arms sales.

AMENDMENT NO. 1287

At the request of Mr. GRASSLEY the name of the Senator from Minnesota [Mr. DURENBERGER] was added as a cosponsor of Amendment No. 1287 proposed to S. 1745, a bill to amend the Civil Rights Act of 1964 to strengthen and improve Federal civil rights laws, to provide for damages in cases of intentional employment discrimination, to clarify provisions regarding disparate impact actions, and for other purposes.

AMENDMENTS SUBMITTED

CIVIL RIGHTS ACT OF 1991

RUDMAN AMENDMENT NO. 1290

Mr. RUDMAN proposed an amendment to amendment No. 1287 proposed

by Mr. GRASSLEY to the bill (S. 1745) to amend the Civil Rights Act of 1964 to strengthen and improve Federal civil rights laws, to provide for damages in cases of intentional employment discrimination, to clarify provisions regarding disparate impact actions, and for other purposes, as follows:

At the end of the pending amendment, add the following:

SEC. . PAYMENTS BY THE PRESIDENT OR A MEMBER OF THE SENATE.

The President or a Member of the Senate shall reimburse the appropriate Federal account for any payment made by their behalf out of such account for an unfair employment practice judgment committed under the provisions of this title by the President or Member of the Senate not later than 60 days after the payment is made.

NICKLES AMENDMENT NO. 1291

Mr. NICKLES proposed an amendment to amendment No. 1287 proposed by Mr. GRASSLEY to the bill S. 1745, supra, as follows:

(a) on page 14, line 9, after "compensatory" add "or punitive";

(b) on page 14, beginning on line 19, strike "The hearing board shall have no authority to award punitive damages.";

(c) on page 14, line 21, redesignate subsection "(i)" as subsection "(j)" and insert after subsection "(h)" the following new subsection:

(i) Notwithstanding any other provision of this act, a Senate employee may be awarded punitive damages on the same terms and conditions as such damages may be awarded to an aggrieved individual in the private sector.";

(d) on page 17, beginning on line 5, strike all of paragraph (3); and

(e) on page 17, beginning on line 13, strike all through page 19, line 3, and insert the following in lieu thereof;

"SEC. 209. CIVIL ACTION BY EMPLOYEE OR APPLICANT FOR EMPLOYMENT FOR REDRESS OF GRIEVANCES; TIME FOR BRINGING OF ACTION.

"(a) Within thirty days of receipt of the decision of a hearing board, or of the Select Committee on Ethics (or such other entity as the Senate may designate) upon an appeal from a decision or order of a hearing board, on a complaint of discrimination based on race, color, religion, sex, national origin, age, handicap or disability, brought pursuant to this title, or after one hundred and eighty days from the filing of a formal complaint with the Office or the notice of appeal with the Select Committee on Ethics (or such other entity as the Senate may designate) upon an appeal from a decision or order of a hearing board until such time as final action may be taken by the hearing board, an employee or applicant for employment, if aggrieved by the final disposition of his or her complaint, or by the failure to take final action on his or her complaint, may file a civil action as provided in 42 U.S.C. 2000e–5, in which civil action the Senate or an employing authority of the Senate that employs the employee shall be the defendant.

"(b) The provisions of 42 U.S.C. 2000e–5(f)(3)–(5), 2000e–5(g), 2000e–5(h), and 2000e–5(j), as applicable, shall govern civil actions brought hereunder. The remedies and jury trial rights made available to private complainants and executive branch employees under section 5 of this Act shall be equally available to any Senate employee bringing an action under this section.

"(c) Notwithstanding any other provision of this act, in a civil action a Senate employee or an executive branch employee may be awarded punitive damages on the same terms and conditions as such damages may be awarded to an aggrieved individual in the private sector.".

WARNER (AND OTHERS) AMENDMENT NO. 1292

Mr. WARNER (for himself, Ms. MIKULSKI, Mr. STEVENS, Mr. ROBB, Mr. WIRTH, Mr. KENNEDY, Mr. SARBANES, and Mr. ADAMS) proposed an amendment to the bill S. 1745, supra, as follows:

On page 4, line 5, insert "or 717" after "706".

On page 4, line 10, strike "or 704" and insert "704, or 717".

On page 4, line 23, insert ", and section 505(a)(1) of the Rehabilitation Act of 1973 (29 U.S.C. 794a(a)(1))," respectively, before "against a".

On page 4, line 25, insert "section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) and the regulations implementing section 501, or who violated the requirements of section 501 of the Act or the regulations implementing section 501 concerning the provision of a reasonable accommodation, or" before "section 102".

On page 4, line 25, strike "Act" and insert "Americans with Disabilities Act of 1990".

On page 5, line 10, insert "or regulations implementing section 501 of the Rehabilitation Act of 1973" before ", damages".

On page 4, line 20, insert "or 717" after "706".

MCCAIN AMENDMENT NO. 1293

Mr. MCCAIN proposed an amendment to amendment No. 1274 proposed by Mr. DANFORTH to the bill S. 1745, supra, as follows:

At the end of the amdt., add:

SEC. . REPORTS OF SENATE COMMITTEES.

(a) Each report accompanying a bill or joint resolution of a public character reported by any committee of the Senate (except the Committee on Appropriations and the Committee on the Budget) shall contain a listing of the provisions of the bill or joint resolution that apply to Congress and an evaluation of the impact of such provisions on Congress.

(b) The provisions of this amendment are enacted by the Senate as an exercise of the rulemaking power of the Senate, with full recognition of the right of the Senate to change its rules, in the same manner, and to the same extent, as in the case of any other rule of the Senate.

JEFFORDS (AND OTHERS) AMENDMENT NO. 1294

Mr. HATCH (for Mr. JEFFORDS, for himself, Mr. MITCHELL, and Mr. DOLE) proposed an amendment to amendment No. 1274 proposed by Mr. DANFORTH to the bill S. 1745, supra, as follows:

At the appropriate place insert the following:

SEC. . Section 1205 of Public Law 101–628 is amended in subsection (a) by—

(1) striking "Three" in paragraph (4)— and inserting "Four" in lieu thereof; and

(2) striking "Three" in paragraph (5) and inserting "Four" in lieu thereof.

HATCH (AND KENNEDY) AMENDMENT NO. 1295

Mr. HATCH (for himself and Mr. KENNEDY) proposed an amendment to amendment No. 1274 proposed by Mr. DANFORTH to the bill S. 1745, supra, as follows:

On page 6, line 14, insert ", for each complaining party" after "exceed".

HATCH (AND DOLE) AMENDMENT NO. 1296

Mr. HATCH (for himself and Mr. DOLE) proposed an amendment to amendment No. 1274 proposed by Mr. DANFORTH to the bill S. 1745, supra, as follows:

At end of the title entitled "Government Employee Rights", add the following new section:

SEC. . INTERVENTION AND EXPEDITED REVIEW OF CERTAIN APPEALS.

(a) INTERVENTION.—Because of the constitutional issues that may be raised by section 209 and section 220, any member of the Senate may intervene as a matter of right in any proceeding under section 209 for the sole purpose of determining the constitutionality of such section.

(b) THRESHOLD MATTER.—In any proceeding under section 209 or section 220, the Unied States Court of Appeals for the Federal Circuit shall determine any issue presented concerning the constitutionality of such section as a threshold matter.

(c) APPEAL.—

(1) IN GENERAL.—An appeal may by taken directly to the Supreme Court of the United States from any interlocutory or final judgment, decree, or order issued by the United States Court of Appeals for the Federal Circuit ruling upon the constitutionality of section 209 or 220.

(2) JURISDICTION.—The Supreme Court shall, if it has not previously ruled on the question, accept jurisdiction over the appeal referred to in paragraph (1), advance the appeal on the docket and expedite the appeal to the greatest extent possible.

MITCHELL AMENDMENT NO. 1297

Mr. HATCH (for Mr. MITCHELL) proposed an amendment to amendment No. 1274 proposed by Mr. DANFORTH to the bill S. 1745, supra, as follows:

Insert in section 209(a) after the phrase "section 208(d)", the following: ", or any Member of the Senate who would be required to reimburse the appropriate Federal account pursuant to the section entitled "Payments by the President or a Member of the Senate" and a final decision entered pursuant to section 208(d)(2)(B),".

NOTICES OF HEARINGS

SELECT COMMITTEE ON POW/MIA AFFAIRS

Mr. KERRY. Mr. President, the Select Committee on POW/MIA Affairs, pursuant to discussions in previous organizational meetings, has scheduled initial hearings on November 5, 6, and 7 to examine the process of investigation of POW/MIA's currently in place, and to determine whether or not live Americans are being held against their will in Southeast Asia. The hearings

will begin at 9:30 a.m., and will take place in room 216 of the Hart Senate Office Building. For additional information, please call 224–2306.

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

Mr. BUMPERS. Mr. President, I would like to announce for the public that the Subcommittee on Public Lands, National Parks and Forests has added an additional bill to the hearing agenda for the subcommittee hearing scheduled for Thursday, November 7, 1991. The additional measure to be considered is S. 1770, a bill to convey certain surplus real property located in the Black Hills National forest to the Black Hills Workshop and Training Center, and for other purposes.

The hearing will take place on Thursday, November 7, 1991, beginning at 9:30 a.m. in room SD–366 of the Dirksen Senate Office Building in Washington, DC.

For additional information concerning the hearing, please contact David Brooks of the subcommittee staff at (202) 224–9863.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON EUROPEAN AFFAIRS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on European Affairs of the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, October 30, at 2 p.m. to hold a hearing entitled, "Consolidating Free-Market Democracy in the Former Soviet Union."

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON EAST ASIAN AND PACIFIC AFFAIRS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on East Asian and Pacific Affairs of the Foreign Relations Committee be authorized to meet during the session of the Senate on Wednesday, October 30, at 10 a.m. to hold a hearing on U.S. security policy in East Asia.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate Committee on Agriculture, Nutrition, and Forestry, be allowed to meet during the session of the Senate on Wednesday, October 30, 1991, at 10 a.m., in SR–332, to hold a hearing regarding agricultural and food assistance for the U.S.S.R.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON SMALL BUSINESS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Small Business Committee be authorized to meet during the session of the Senate on Wednesday, October 30, 1991, at 9 a.m. Senator LIEBERMAN will chair a full committee hearing that will examine the small business credit crunch problem.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, October 30, at 3:30 p.m. to receive a closed briefing on the administration plan for military assistance to Jordan.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

SMALL BUSINESS ACCESS TO CREDIT

• Mr. BUMPERS. Mr. President, today more than any other time since I have been in the Senate, the most difficult issue facing most small business owners is access to credit. Year in and year out, availability of credit at a reasonable cost is identified by business owners as their chief obstacle. Today, however, for a variety of reasons, credit has become a bottleneck in the economy. With our economy in the doldrums at best, businesses with good credit histories and promising futures find that their usual sources of capital have virtually dried up.

The chief mission of the Small Business Administration since 1953 has been and remains to attempt to bridge the credit gap—to help smooth or make amends for defects in the market economy which make capital inordinately difficult for smaller firms. Over the years, Congress has crafted many programs to fit specific types of economic growth problems. These include both direct and guaranteed loans, as well true equity venture capital. By all accounts, one of SBA's most successful business expansion programs has been the Certified Development Company Program, also known as the section 504 loan program.

Under section 504 of the Small Business Investment Act of 1958, SBA guarantee repayment of a small business debenture—a long-term loan for 10 or 15 years—which finances not more than 40 percent of the cost of a business expansion or acquisition. The loan is secured by real estate, machinery, or capital equipment, so the taxpayer's position is fairly secure. The small business gets a favorable interest rate, just slightly over the Treasury's cost of money, for 40 percent of the projected and a long payout period. Fifty percent of the project is financed by a conventional lender such as a bank, and the Government agrees to take a second position on the mortgage. The remaining 10 percent must be provided by equity from the business.

According to SBA, the 504 program enjoys a loan currency rate in excess of 95 percent, and its actual losses have been minuscule. The program has been in existence for slightly over 10 years and has provided over $2 billion in financing to small business.

Mr. President, an article concerning this program recently appeared in the ABA Banking Journal, and I ask that it be reprinted in the CONGRESSIONAL RECORD at the conclusion of my remarks. Given the difficulty which businesses everywhere face in finding capital, they should well consider this and other SBA programs.

The article follows:

[From the ABA Banking Journal, Oct. 1991]

AN ANSWER TO THE CREDIT CRUNCH?

(By Scott Davis and Kent Moon)

In the search for profitable assets, many banks investigate the small business market—where they often find skepticism.

Small businesses frequently complain that banks only want their deposits and transaction fees, ignoring the "little guy's" credit needs. They feel that small firms get hit first when funds tighten and are the last to be relieved when the business picks up.

The Small Business Administration's 504 guaranteed loan program addresses this dilemma by providing a source of long-term credit at reasonable terms. Participating banks gain profitable, quality assets that also help demonstrate compliance with the Community Reinvestment Act.

504 BASICS

Congress created the 504 program in 1980 to provide long-term financing of fixed-assets for healthy, expanding small businesses. Only ownerusers qualify. The program is administered through certified development companies (CDCs) licensed by SBA. These nonprofit organizations can be sponsored either by private interests or by state and local governments. There are more than 400 CDCs across the country.

Originally, Congress targeted 504 to assist expanding businesses—proven to be the source of the vast majority of new jobs. More recently, the program has been amended to expand assistance to exporters, manufacturers, rural firms, minority-owned firms, and others.

Most projects must either create or save one job for every $35,000 of 504 financing although alternative policy objectives can be met instead. For example the job standard can be waived if the project is part of the lender's CRA effort.

CREDIT STRUCTURE

The 504 program offers borrowers access to 90 percent financing for the purchase of fixed assets. Qualifying transactions could include buying land and constructing a building on the land; buying an existing building; and buying major equipment.

A typical 504 project looks like this:

(1) A private-sector lender provides at least 50 percent of the project's cost.

(2) SBA guarantees debentures that can provide up to 40 percent of the project cost. The agency's lien is subordinate to the lender's.

(3) The borrower contributes 10 percent in new equity.

Program financing is available in 10 or 20 year maturities. Real estate is usually fi-

nanced with the 20-year term. The maximum amount of the portion funded through the 504 debentures can be as high as $1 million. The practical minimum loan is $75,000.

Certified development companies generally maintain a staff of experienced 504 lending officers.

Bankers familiar with this program often initiate 504 loan requests by calling their local CDC loan officer. Once the development company's staff finishes an initial screening to determine project eligibility and borrower creditworthiness, the lender and the CDC loan officer agree on a project financing structure. Next, staff present the loan to the CDC's board, while the bank handles its own credit review. The bank's commitment is generally conditioned on approval of the 504 application.

Unlike the SBA 7(a) program, in which the lender completes all SBA documentation, the 504 package is completed by CDC staff. SBA guarantees repayment of 504 debentures issued by the development company and thus must approve each transaction. SBA's turnaround time runs from two to three weeks, and is often quicker.

When a project involves new construction, the lender making the 50% first mortgage usually provides the other 40% up front once SBA issues its approval. When construction is completed, the proceeds of the sale of the debenture serve as permanent takeout financing for the 40% share.

Once the debenture is sold, the development company services the 504 portion of the transaction and the bank services its part. The borrower makes two monthly payments: one to the bank and the other to Colson Services Corp., the 504 program's servicing agent.

FINANCIAL DETAILS

Upfront fees from all parties in the transaction total 2⅞% and are financed as part of the debenture issuance. Most "soft" costs, such as appraisals, environmental audits, soil tests, interim financing fees, interim interest, and closing costs can also be included in the 504 project financing.

The 504 debentures have a prepayment penalty for the first half of the loan term. During the first year, the penalty is approximately 100% of the interest rate multiplied by the principle balance. The penalty declines in even increments, falling to zero by the loan's midpoint.

There are no fee or rate restrictions on the bank's portion of the financing. The bank rate can be viable or fixed. If a 20-year 504 loan is involved, the bank must provide a 10-year term on its portion. If a 10-year 504 loan is used to finance equipment, the bank must provide a 7-year term.

The SBA-guaranteed debentures that fund the government portion of the program are pooled and certificates in each pool are frequently purchased by institutional investors. Citicorp and Merrill Lynch currently act as underwriters for the program and sell a pool of 20-year 504 debentures each month. Ten-year debentures are pooled and sold quarterly.

Since 1980 this program has provided over $3 billion in long-term fixed-asset financing to approximately 13,000 borrowers. With a loss rate of approximately 2.5%, the program is generally considered a strong performer among federally backed business credit programs.

SECONDARY MARKET FOR BANKS

Because of the quality of these loans, the advantage of a first lien, and the SBA guarantee behind 40% of the total borrowing, banks have generally held 504 loans in portfolio. However, the program's growth has been limited due to the lack of a secondary market into which banks can sell their 504 program loans when that option would be attractive.

Salt Lake City's Zions First National Bank has responded by developing a new program to buy, pool, and sell qualifying 504 first mortgages. Zions, $3 billion in assets, is one of the largest SBA 7(a) loan poolers and is an active SBA lender.

Zions is currently working with the National Association of Development Companies and a network of participating certified development companies to locate and buy new or existing 504 first mortgages. These loans are purchased at the outstanding principle and interest amount, with Zions paying a negotiated premium to the selling bank.

The major criteria for Zion's purchases:

(1) The small business must be at least two years old.

(2) The loan must meet all 504 program regulatory requirements.

(3) Existing first mortgages must be current and have a favorable history.

(4) Loans must have a variable interest rate that adjusts at least quarterly.

(5) Loans should be secured by multi-purpose real estate located in counties with a population of 20,000 or greater.

Zions performs an independent underwriting review of all loans presented for purchase. The first pool is expected to be sold later this year.

GETTING STARTED

The 504 program offers numerous advantages for both lender and borrower. Lenders find they can finance more projects than through conventional financing techniques. This enables them to spread their capital among more borrowers.

For the borrower, access to 90% financing is often the key to making a project move forward. Many small business owners cannot afford the 25% to 30% down payments required by conventional real estate underwriting criteria. Further, the debentures, as government-guaranteed instruments, carry lower rates than private corporate bonds. This advantage is passed along to borrowers. In recent months, rates, including up-front fees, have been between 9.6% and 9.9%.●

NOTICE OF DETERMINATION BY THE SELECT COMMITTEE ON ETHICS UNDER RULE 35, PARAGRAPH 4, PERMITTING ACCEPTANCE OF A GIFT OF EDUCATIONAL TRAVEL FROM A FOREIGN ORGANIZATION

● Mr. SANFORD. Mr. President, it is required by paragraph 4 of rule 35 that I place in the CONGRESSIONAL RECORD notices of Senate employees who participate in programs, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization.

The select committee has received a request for a determination under rule 35 for Senator and Mrs. Moynihan to participate in a program in England sponsored by Oxford University on November 29, 1991.

The committee has determined that participation by Senator and Mrs. Moynihan in this program, at the expense of Oxford University is in the interest of the Senate and the United States.●

HEROES LUNCHEON

● Mr. DECONCINI. Mr. President, I rise to recognize the fine efforts of Arizona's four living recipients of the Congressional Medal of Honor, who each year pay tribute to children who have courageously confronted serious illness. Now in its fourth year, the Phoenix Children's Hospital Heroes Luncheon will honor six courageous young people at a touching ceremony on November 15. I wish to join with Arizona's Medal of Honor recipients in recognizing the extraordinary valor in battling illness displayed by these youngsters.

Richard W. "Richie" Baker, of Mesa, AZ, is a 12-year-old who is battling acute lymphoblastic leukemia while maintaining his enthusiasm for life as a junior high school student.

Lee Brietenstine, of Tempe, AZ, is an exceptional 12-year-old who has endured numerous illnesses, including asthma, bronchiectasis, and eosinophilic gastroenteritis. Through all of this, he has stayed in school and has participated in sports.

David Dalton, 13 years old, is happy and talkative even after undergoing two neurosurgeries. This teenager from Mesa, AZ, shows us how to face life's difficulties with courage.

Lindsey "Lin" Doolittle, is a joyous 6-year-old from Chandler, AZ, who always has a hug and smile for family and friends. She has struggled with heart problems and undergone numerous surgeries, but remains full of fun and love.

Ashleigh Johnson, 6 years old, has had numerous neurologic, orthopedic, and feeding difficulties throughout her life. This special first-grader from Phoenix, AZ, continues to demonstrate her positive attitude and willingness to tackle all obstacles.

Penny Sutton, 14 years old, from Casa Grande, AZ, has been dealing with kidney failure since age 9. Despite her body's rejection of three kidney transplants and having to undergo dialysis, she is determined to keep smiling.

I want to commend these young people for the example they have set for us all. Life has many challenges, many difficulties, that must be faced. Courage, determination, and a positive attitude make it possible to meet and overcome those difficulties. Although young in years, these children are ahead of many adults, in realizing those truths. My best wishes accompany each child as they go forward.●

SOVIET JEWISH REFUSENIK CASE: EVGENY PISAREVSKY

● Mr. WALLOP. Mr. President, the democratic reforms that have swept

through Eastern Europe in the last 2 years and the continuing evolution of events in the Soviet Union have given hope to Soviet Jews who have tried for years to emigrate. And anticipation of long-sought family reunification went up a notch in May of this year when the Supreme Soviet adopted legislation liberalizing Soviet emigration regulations. The number of Soviet refugees to the United States actually increased in the weeks following the August coup. But promises and numbers do not shroud the fact that in 1991, the vast majority of Soviet refugee applicants to the United States have been members of historically persecuted groups: Soviet Jews, Evangelical Christians, Ukrainian Catholics, and Ukrainian Orthodox. In St. Petersburg, a city of 120,000 Jews, Jews from all professions and classes—even Jewish visitors from abroad—report a rise in anti-Semitic confrontation in stores, in buses, and on the subway.

Evgeny Pisarevsky, a Soviet Jewish refusenik, serves as a reminder to us all that promises for less burdensome exit procedures in the republics of the former U.S.S.R. must be backed with substantive action. Evgeny, a computer engineer, ended his sensitive work with the Soviet company, Impulse Scientific Production Association, in 1978. He and his family waited 10 years from that date before applying for permission to emigrate. Yet in 1988 Evgeny was still considered a security risk. Thus began the long, frustrating process of applying and reapplying for permission to leave the Soviet Union. Evgeny's son, Vladimir, received an exit visa in August 1989, but 2 months later found that he, along with his parents, would be unable to emigrate permanently until 1995. He used his exit visa immediately and left for the United States. Irina Pisarevsky, the wife of Evgeny, visited Vladimir in New York in November 1990 on a tourist visa. Meanwhile, the Ministry of Defense once again refused to lift Evgeny's secrecy classification. Today, this family must cope not only with forced separation, but must live with the reality of rising anti-Semitism in the Russian Republic. Vladimir and Irina cannot help but feel that Evgeny, an active member of the Leningrad Jewish community, is in danger.

Let us remember Evgeny Pisarevsky and over 350 Jewish refuseniks like him, who remain captives of an arcane, discriminating system. Soviet Jews will be unable to celebrate the momentous changes sweeping across the European continent as long as families like Evgeny Pisarevsky's are separated against their will. And until the fundamental human right to emigrate is respected, democracy will not have arrived, fully, to the republics of the former U.S.S.R.

RAM'S HORN AWARD HONOREES DONNA AND RONALD TAYLOR

• Mr. D'AMATO. Mr. President, I rise today to recognize two outstanding people, Donna and Ronald Taylor. The Taylors are this year's Ram's Horn Award honorees at the Fall Horticulture Ball on Saturday, November 2, at the Radisson Plaza Hotal in Melville, NY.

Although they live in Goodrich, MI, they are renowned throughout the nursery industry. The Taylors began their alliance and their horticulture careers at SUNY, Farmingdale. Donna and Ron met at Farmingdale. They both had been encouraged to attend Farmingdale by former graduates of the school because of their interest and great love for horticulture. For both Donna and Ron had expressed a very early interest in horticulture.

At the age of 14 Ron became interested in gardening through the influence of a French gentleman who taught him the basics of planting, digging trees, tieing, pruning, and more. Donna became interested in gardening through her father and also through the 4-H club. During high school in New Jersey, Donna worked at Duke Gardens Foundation as a tour guide of the gardens. At the same time, Ron was working at Mill Creek Nursery.

Both Donna and Ron have expressed an interest in horticulture at a very young age and followed through to the present. They were married in 1968, after graduating from SUNY at Farmingdale. They moved to Maryland and both built careers in the nursery business. In 1979, they had a son, Brad. Presently, Donna and Ron both work for Frank's Nursery and Crafts, Inc.•

THE MADRID PEACE CONFERENCE

• Mr. KASTEN. Mr. President, I rise today to applaud the efforts of President Bush and Secretary of State James Baker in trying to mediate a true and lasting peace in the Middle East. Today's historic meeting of Egyptians, Israelis, Jordanians, Lebanese, Palestinians, Syrians, Soviets, and Americans is a real breakthrough in the quest for peace.

The world has undergone a major transformation in the past 2½ years. Attitudes and rules of the past are no longer applicable today. What seemed impossible a year ago is now in sight. The success of the U.S.-led allied forces in the Persian Gulf war has created a window of opportunity for all parties in this tragic conflict to settle their differences peacefully, at the negotiating table—not on the battlefield.

Since Israeli independence, Arabs and Israelis have fought wars for nearly 40 years. Wars in 1948, 1956, 1967, 1973, and 1982 have prevented any possibility for settling the Middle East conflict. But today marks a watershed in Israeli-Arab relations. Both parties will be meeting to discuss arrangements for peace—not the logistics of a ceasefire. This is very significant.

President Bush and Secretary of State James Baker both deserve our congratulations for accomplishing a task that—only a few months ago—seemed out of reach.•

COMMENCEMENT OF THE MIDDLE EAST PEACE CONFERENCE

• Mr. D'AMATO. Mr. President, in Madrid today, Israel, Syria, Egypt, Jordan, Lebanon, and the Palestinians begin talks aimed at achieving a long-sought peace in the Middle East. I commend the President for his wisdom and perseverance in inaugurating these historic talks.

In a region where generations of youth have been swallowed by war and deprivation, the only choice is peace. But peace must not be illusory; peace must be lasting. And, in the end, peace must be fair and secure.

We must realize that in these negotiations, Israel is pitted against all the Arab nations combined. This has not changed for the five decades of her existence. If Israel is required to make concessions, then fairness dictates that the Arabs must also. Israel's borders must be secure. Her existence must be recognized by all Arab States. The Arab economic boycott waged against her must immediately end. And the continual acts of Arab terrorism aimed at innocent Israeli men, women, and children, must cease.

Let us not forget that those nations sitting across the table from Israel have started five wars seeking her extermination. To Israel's north lies Syria, which has repeatedly invaded Israel and waged a proxy war of terrorism, killing Israel's children as well as Americans for years. Syria has been an unrelenting enemy. Will the Demon of Damascus now end the carnage and agree to a true and lasting peace?

Israel's northern neighbor Lebanon is now a mere province of Syria and serves as an extended base for its terror campaign against Israel. Recent attacks on Israeli soldiers in Lebanon show a clear reluctance to make peace with Israel. Can we believe that the murderous Lebanese factions—united only in their hatred of Israel—be reigned in?

To the east lies Jordan, who steadfastly backed Iraq in the Persian Gulf war. Her refusal to abide by the United Nations weapons embargo against Iraq was a flagrant disregard for United States troops in time of war. Can we expect Jordan to treat Israel any better?

The Palestinians, for their part, have murdered over 800 of their own in the intifada, simply because they wanted to make peace with Israel. How will they treat Israel?

In the end, we must recognize that peace is not one-sided. It is

multidimensional. Each party must realize that their contribution to the process must not be a mere token, but a series of fair and secure concessions dedicated toward peace. Anything less is simply a recipe for Israel's destruction.●

THE CONGRESSIONAL CALL TO CONSCIENCE

● Mr. D'AMATO. Mr. President, I rise today to urge my colleagues to participate in the Congressional Call to Conscience for Soviet Jews. Through the Call to Conscience, the Senate recognizes the continuing plight of Soviet refuseniks.

One such tragic story that has been brought to my attention involves Gennady (Haskel) Weinstein. Gennady, a former physician, has been refused permission to emigrate to Israel.

In July 1988, Gennady was falsely accused of murder and held for 5 months before he was allowed to see a lawyer. Gennady, who had been working in a state dispensary as a physician and narcotic specialist, allegedly murdered a drug addict. Gennady, under severe physical and mental torture, confessed to this crime to protect his family from police harassment.

After 6 months of detention, Gennady's trial finally began in January 1989. During the trial the police charade began to fall apart, as many of the witnesses testified that Gennady did not commit the murder. The court ordered the case to be reinvestigated, and Gennady was released in July 1989.

Gennady was again arrested in December 1989, and kept in prison for 18 months as the police conducted the second investigation. In prison he was repeatedly subjected to physical and mental abuse. Gennady was released a second time on May 28, 1991, when the court decided that the case should be investigated for a third time.

Finally, in September 1991, the police dropped all the charges against Gennady, but he was forced to sign a restraining order not to leave the district.

Since that time he has unsuccessfully sought emigration to Israel, but the Soviet Government has denied all of Gennady's pleas based on the illegal restraining order. I urge my fellow Senators to lend their support to this worthy cause, and to let the Soviet Union know that we will not stand for the continuing abuses against Soviet Jews.●

EXECUTIVE SESSION

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nomination reported today by the Committee on Labor and Human Resources, Delbert L. Spurlock, Jr., to be Deputy Secretary of Labor.

I ask unanimous consent that the nominee be confirmed, that any statement appear in the RECORD as if read, that the motions to reconsider be laid upon the table, that the President be immediately notified of the Senate's action, and that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nomination considered and confirmed is as follows:

DEPARTMENT OF LABOR

Delbert L. Spurlock, Jr., to be Deputy Secretary of Labor.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

FRANK M. JOHNSON, JR. UNITED STATES COURTHOUSE

AND THE

EWING T. KERR UNITED STATES COURTHOUSE

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Environment and Public Works Committee be discharged from further consideration of the following bills: The Frank M. Johnson, Jr. courthouse bill and the Ewing T. Kerr courthouse bill; that the Senate proceed to their immediate consideration en bloc, that they be deemed read a third time and passed, that the motions to reconsider be laid upon the table, and any statements in relation to these bills be inserted in the RECORD as though read.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

A bill (S. 1467) to designate the U.S. Courthouse located at 15 Lee Street in Montgomery, AL, as the "Frank M. Johnson, Jr. United States Courthouse."

TO NAME THE U.S. COURTHOUSE IN MONTGOMERY, AL, IN HONOR OF JUDGE FRANK M. JOHNSON, JR.

Mr. HEFLIN. Mr. President, U.S. Court of Appeals Judge Frank M. Johnson, Jr., is one of our Nation's most respected and distinguished jurists. It is particularly appropriate today to recognize him on the occasion of his 73d birthday by the adoption of S. 1467, a bill which will name the U.S. Courthouse in Montgomery, AL, in his honor.

Judge Johnson was born in Winston County, AL, and attended public schools all of his life, graduating from the University of Alabama Law School in 1943. He married the lovely Ruth Jenkins in 1938, and 53 years later they remain devoted to each other. During World War II, Judge Johnson saw combat action in Normandy, France, and across into Germany, where he was wounded twice on the field of battle and later was decorated for gallantry. He was discharged as a captain and returned to the general practice of law with the firm of Curtis, Maddox, and Johnson in Jasper, AL, and in 1953 he was named the U.S. attorney for the Northern District of Alabama. In 1955, President Dwight D. Eisenhower appointed Frank Johnson to the U.S. District Court for the Middle District of Alabama where he served until 1979, at which time President Jimmy Carter nominated him to be a U.S. circuit judge for the fifth circuit. The fifth circuit subsequently became the eleventh circuit in 1981; Judge Johnson continues to serve in this courthouse as a U.S. Court of Appeals judge for the eleventh circuit.

Judge Johnson's career is one of entire devotion to the rule of law and justice. He has been very active, serving in a number of professional capacities within the judicial branch of the Federal Government. Judge Johnson's honors are almost too numerous to mention, but they include Honorary Doctorates of Law from Notre Dame University, Princeton University, the University of Alabama, Boston University, Yale University, Tuskegee University, and Mercer University. Two biographies have been written about Judge Johnson: One entitled "Judge Frank M. Johnson, Jr.," by Robert F. Kennedy, Jr.; and "Judge Frank Johnson and Human Rights in Alabama," by Dr. Tinsley E. Yarbrough.

It is entirely fitting, in my judgment, to name the U.S. Courthouse in Montgomery in honor of Frank M. Johnson, Jr., for numerous reasons. The genesis of the whole civil rights movement began in Montgomery, AL, and it was during that early period of Judge Johnson's tenure on the district bench in Montgomery that cases came before him in his second floor courtroom in the U.S. Courthouse. During his 24-year tenure on the district bench, Judge Johnson rendered decisions in such cases as Gomillion versus Lightfoot, U.S. versus U.S. Klans, Reynolds versus Sims, Lee versus Macon County Board of Education, Wyatt versus Aderholt, and Craig versus Alabama State University. These cases are landmarks in areas of the law in desegregation, voting rights, reapportionment, prisoner, and mental health rights.

Judge Johnson's courtroom has been a living symbol of decency and fairness to all who come before his bench. It is from this courthouse that the term "rule of law" came to have true meaning; it is from this courthouse that the term "equal protection of the law" became a reality; and it is from this

courthouse that the phrase "equal justice under law" was dispensed despite threats to his personal life. On June 11, 1974, Princeton University, in awarding Judge Johnson an honorary doctor of laws degree, said:

In the heat of the long battle for civil rights, equal employment, and freedom of speech, his courtroom has been a sanctuary of integrity, fairness, and decency, where constitutional principle has guided difficult decisions. Neither fear nor prejudice, ignorance nor ignoble opposition can undermine his stern devotion to equal protection for all citizens under the law of the land.

S. 1467 will name the U.S. Courthouse in Montgomery, AL, in honor of this distinguished U.S. court of appeals judge for the eleventh circuit, Frank M. Johnson, Jr. The Frank M. Johnson, Jr. U.S. Courthouse will continue to serve as a landmark symbol of freedom and hope for all who are struggling for fairness and justice. I urge my colleagues to join me in passing this important legislation honoring this distinguished jurist.

So the bill (S. 1467) was deemed read a third time and passed, as follows:

S. 1467

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The United States Courthouse located at 15 Lee Street in Montgomery, Alabama, shall be known and designated as the "Frank M. Johnson, Jr. United States Courthouse".

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the United States Courthouse referred to in section 1 shall be deemed to be a reference to the "Frank M. Johnson, Jr. United States Courthouse".

The PRESIDING OFFICER. The clerk will report the second bill.

The legislative clerk read as follows:

A bill (S. 1899) to designate the U.S. Courthouse located at 111 South Wolcott in Casper, WY, as the "Ewing T. Kerr United States Courthouse."

So the bill, was deemed read a third time and passed, as follows:

S. 1899

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS.

The Congress finds that—

(1) Ewing T. Kerr has dedicated 64 years of his life to the practice of law in the State of Wyoming;

(2) over a period of 36 years, as a Federal district judge, Ewing T. Kerr has embodied the spirit of public service and has been dedicated to upholding the law of the land; and

(3) Ewing T. Kerr deserves recognition, honor, and gratitude.

SEC. 2. DESIGNATION.

The United States Courthouse located at 111 South Wolcott in Casper, Wyoming, is designated as the "Ewing T. Kerr United States Courthouse".

SEC. 3. LEGAL REFERENCES.

Any reference in any law, regulation, document, record, map, or other paper of the United States to the United States Courthouse referred to in section 1 is deemed to be a reference to the Ewing T. Kerr United States Courthouse.

WAIVER OF CERTAIN RECOVERY REQUIREMENTS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 285, S. 1891, regarding the construction or remodeling of facilities.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1891) to permit the Secretary of Health and Human Services to waive certain recovery requirements with respect to the construction or remodeling of facilities, and for other purposes.

The PRESIDING OFFICER. Is their objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 1891

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. WAIVER OF CERTAIN RECOVERY REQUIREMENTS.

Section 2713(d) of the Public Health Service Act (42 U.S.C. 300aaa-12(d)) is amended by striking out "(a)(2)" and inserting in lieu thereof "(a)".

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

INDIAN EMPLOYMENT, TRAINING, AND RELATED SERVICES DEMONSTRATION ACT

Mr. MITCHELL. Mr. President I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 273, S. 1530, regarding employment and related services provided by Indian tribes.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 1530) to authorize the integration of employment, training, and related services provided by Indian tribes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Select Committee on Indian Affairs, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Indian Employment, Training and Related Services Demonstration Act of 1991".

SEC. 2. STATEMENT OF PURPOSE.

The purposes of this Act are to demonstrate how Indian tribal governments can integrate the employment, training and related services they provide in order to improve the effectiveness of those services, reduce joblessness in Indian communities and serve tribally-determined goals consistent with the policy of self-determination.

SEC. 3. DEFINITIONS.

For the purposes of this Act, the following definitions apply:

(1) INDIAN TRIBE.—The terms "Indian tribe" or "tribe" shall have the same meaning as in section 4(e) of the Indian Self-Determination and Education Assistance Act.

(2) INDIAN.—The term "Indian" shall have the same meaning as in section 4(d) of the Indian Self-Determination and Education Assistance Act.

(3) SECRETARY.—Except where otherwise provided, the term "Secretary" means the Secretary of the Interior.

SEC. 4. INTEGRATION OF SERVICES AUTHORIZED.

The Secretary of the Interior, in cooperation with the appropriate Secretary of Labor, Secretary of Health and Human Services, or the Secretary of Education, shall, upon the receipt of a plan acceptable to the Secretary of the Interior submitted by an Indian tribal government, authorize the tribal government to consolidate, in accordance with such plan, its federally funded employment, training and related services programs in a manner that integrates the program services involved into a single, coordinated, comprehensive program and reduces administrative costs by consolidating administrative functions.

SEC. 5. PROGRAMS AFFECTED.

The programs that may be integrated in a demonstration project under any such plan referred to in section 4 shall include, but are not limited to, programs authorized under the Job Training Partnership Act, the job opportunities and basic skills program under the Family Support Act of 1988, vocational education programs under the Carl D. Perkins Vocational Educational Act, and programs administered by the Secretary generally referred to as the "tribal work experience program" and the "employment assistance program".

SEC. 6. PLAN REQUIREMENTS.

For a plan to be acceptable pursuant to section 4, it shall—

(1) identify the programs to be integrated;

(2) be consistent with the purposes of this Act authorizing the services to be integrated in a demonstration project;

(3) describe a comprehensive strategy which identifies the full range of potential employment opportunities on and near the tribal government's service area, and the education, training and related services to be provided to assist Indian workers to access those employment opportunities;

(4) describe the way in which services are to be integrated and delivered and the results expected from the plan;

(5) identify the projected expenditures under the plan in a single budget;

(6) identify the agency or agencies of the tribal government to be involved in the delivery of the services integrated under the plan;

(7) identify any statutory provisions, regulations, policies, or procedures that the tribal gov-

ernment believes need to be waived in order to implement its plan; and

(8) be approved by the governing body of the affected tribe.

SEC. 7. PLAN REVIEW.

Upon receipt of the plan from a tribal government, the Secretary of the Interior shall consult with the Secretary of each Federal department providing funds to be used to implement the plan, and with the tribal government submitting the plan. The parties so consulting shall identify any waivers of statutory requirements or of Federal departmental regulations, policies, or procedures necessary to enable the tribal government to implement its plan. Notwithstanding any other provision law, the Secretary of the affected department shall have the authority to waive any regulation, policy, or procedure promulgated by that department that has been so identified by such tribal government or department, unless the Secretary of the affected department determines that such a waiver is inconsistent with the purposes of this Act. Notwithstanding any other provision of law, the affected Secretary shall also have the authority to waive any statutory provisions so identified. Further, in carrying out their responsibilities under this section, the Secretary of the Interior, Secretary of Labor, Secretary of Health and Human Services, and Secretary of Education shall interpret Federal laws in a manner that will facilitate the accomplishment of the purposes of this Act.

SEC. 8. PLAN APPROVAL.

Within 90 days of the receipt of a tribal government's plan by the Secretary, the Secretary shall inform the tribal government, in writing, of the Secretary's approval or disapproval of the plan. If the plan is disapproved, the tribal government shall be informed, in writing, of the reasons for the disapproval and shall be given an opportunity to amend its plan or to petition the Secretary to reconsider such disapproval.

SEC. 9. JOB CREATION ACTIVITIES AUTHORIZED.

The plan submitted by a tribal government may involve the expenditure of funds for the creation of employment opportunities and for the development of the economic resources of the tribal government or of individual Indian people if such expenditures are consistent with an overall tribal economic development strategy which has a reasonable likelihood of success.

SEC. 10. PRIVATE SECTOR TRAINING PLACEMENTS.

Notwithstanding any other provision of law, a tribal government participating in a demonstration program under this Act is authorized to utilize funds available under such plan to place participants in training positions with private employers and pay such participants a training allowance or wage for a period not to exceed 12 months, if the tribal government obtains a written agreement from the private employer to provide on-the-job training to such participants and to guarantee permanent employment to the participants upon satisfactory completion of the training period.

SEC. 11. FEDERAL RESPONSIBILITIES.

Within 180 days following the date of enactment of this Act, the Secretary of the Interior, the Secretary of Labor, the Secretary of Health and Human Services and the Secretary of Education shall enter into an interdepartmental memorandum of agreement providing for the implementation of the demonstration projects authorized under this Act. The lead agency for a demonstration program under this Act shall be the Office of Tribal Services in the Bureau of Indian Affairs, Department of the Interior. The responsibilities of the lead agency shall include—

(1) the use of a single report format related to the plan for the individual project which shall be used by a tribal government to report on the activities undertaken under the project;

(2) the use of a single report format related to the projected expenditures for the individual project which shall be used by a tribal government to report on all project expenditures;

(3) the development of a single system of Federal oversight for the project, which shall be implemented by the lead agency; and

(4) the provision of technical assistance to a tribal government appropriate to the project, except that a tribal government shall have the authority to accept or reject the plan for providing such technical assistance and the technical assistance provider.

SEC. 12. NO REDUCTION IN AMOUNTS.

In no case shall the amount of Federal funds available to a tribal government involved in any demonstration project be reduced as a result of the enactment of this Act.

SEC. 13. INTERAGENCY FUND TRANSFERS AUTHORIZED.

The Secretary of the Interior, Secretary of Labor, Secretary of Health and Human Services, or the Secretary of Education, as appropriate, is authorized to take such action as may be necessary to provide for an interagency transfer of funds otherwise available to a tribal government in order to further the purposes of this Act.

SEC. 14. FISCAL ACCOUNTABILITY.

Nothing in this Act shall be construed so as to interfere with the ability of the Secretary or the lead agency to fulfill the responsibilities for the safeguarding of Federal funds pursuant to the Single Audit Act of 1984.

SEC. 15. FUNDS AUTHORIZED FOR TRAINING RELATED TO INDIAN ROAD CONSTRUCTION.

In expending moneys allocated for Indian road construction programs, the Secretary of the Interior shall expend an amount equal to one quarter of one percent of the amount so allocated to train Indians for employment on road construction projects. Such training may include literacy programs and other educational programs determined by a tribal government to be necessary.

SEC. 16. REPORT ON STATUTORY OBSTACLES TO PROGRAM INTEGRATION.

Within one year of the date of enactment of this Act, the Secretary shall submit a report to the Select Committee on Indian Affairs of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives on the implementation of the demonstration program authorized in this Act. Such report shall identify statutory barriers to the ability of tribal governments to more effectively integrate their employment, training, and related services in a manner consistent with the purposes of this Act.

SEC. 17. LABOR MARKET INFORMATION ON THE INDIAN WORK FORCE.

(a) REPORT.—The Secretary, in consultation with the Secretary of Labor, shall, in a consistent and reliable manner, develop, maintain and publish, not less than biennially, a report on the population, by gender, eligible for the services which the Secretary provides to Indian people. The report shall include, but is not limited to, information at the national level by State, Bureau of Indian Affairs Service area, and tribal level for the—

(1) total service population;

(2) the service population under age 16 and over 64;

(3) the population available for work, including those not considered to be actively seeking work;

(4) the employed population, including those employed with annual earnings below the poverty line; and

(5) the numbers employed in private sector positions and in public sector positions.

(b) INDIAN DEMOGRAPHIC INFORMATION.—The Secretary, in consultation with the Bureau of the Census of the Department of Commerce, and the National Center for Native American Studies and Policy Development authorized by Public Law 101–301, shall prepare a report on the need for comprehensive, accurate and periodically updated information on the size and characteristics of the American Indian and Alaska Native population throughout the entire United States. This report shall include the need for information, together with the cost of acquiring such information, on the characteristics and need for education, health, housing, job training, and other basic needs of such population, and shall take into consideration the need for this information by Indian tribes and organizations serving Indians in nonreservation areas. The report shall be submitted to the Select Committee on Indian Affairs of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives not later than 12 months after the date of enactment of this Act.

SEC. 18. ASSIGNMENT OF FEDERAL PERSONNEL TO STATE INDIAN ECONOMIC DEVELOPMENT PROGRAMS.

Any State with an economic development program targeted to Indian tribes shall be eligible to receive, at no cost to the State, such Federal personnel assignments as the Secretary, in accordance with the applicable provisions of the Intergovernmental Personnel Act of 1970, may deem appropriate to help ensure the success of such program.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, shall it pass?

So the bill (S. 1530), was passed.

The title was amended so as to read: "An Act to authorize the integration of employment, training, and related services provided by Indian tribal governments."

Mr. MITCHELL. Mr. President, I move to reconsider the vote.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ZUNI RIVER WATERSHED ACT OF 1991

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 257, S. 1350, the Zuni River Watershed Act of 1991.

The PRESIDING OFFICER. The bill will be stated by title. The assistant legislative clerk read as follows:

A bill (S. 1350) to formulate a plan for the management of natural and cultural resources on the Zuni Indian Reservation, on the lands of the Ramah Band of the Navajo Tribe, and in other areas within the Zuni River watershed and upstream from the Zuni Indian Reservation, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Select Committee on Indian Affairs, with an amendment to strike all after the enacting clause, and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Zuni River Watershed Act of 1991".

SEC. 2. FINDINGS.

Congress finds that—

(1) over the past century, extensive damage has occurred in the Zuni River watershed, including—

(A) severe erosion of agricultural and grazing lands;

(B) reduced productivity of renewable resources;

(C) loss of nonrenewable resources; and

(D) loss of water;

(2) the portion of the Zuni River watershed that is upstream from the Zuni Indian Reservation includes—

(A) Federal land;

(B) State land;

(C) Zuni Indian Trust land;

(D) Navajo Indian Tribal Trust and fee land;

(E) Ramah Band of the Navajo Tribe of Indians Trust land;

(F) individual Indian allotment lands; and

(G) private land;

(3) the Department of Agriculture, the Bureau of Indian Affairs, the Zuni Indian Tribe, the Ramah Band of the Navajo Tribe of Indians, and the Navajo Nation agree that corrective measures are required to prevent continued degradation of natural and cultural resources throughout the Zuni River watershed;

(4) with the passage of the Zuni Land Conservation Act of 1990 (Public Law 101-486), the Zuni Indian Tribe has the ability to take these corrective measures within the Zuni Indian Reservation;

(5) the implementation of a watershed management plan within the Zuni Indian Reservation will be ineffective without the implementation of a corresponding plan for the management of the portion of the Zuni River watershed that is upstream from the Zuni Indian Reservation;

(6) most of the portion of the Zuni River watershed that is upstream from the Zuni Indian Reservation is within the Cibola National Forest or Indian Trust lands;

(7) the Secretary of Agriculture, acting through the Chief of the Forest Service and the Chief of the Soil Conservation Service, the Secretary of the Interior, acting through the Assistant Secretary for Indian Affairs, and the Tribes, have the technical expertise to formulate a plan for the management of the portion of the Zuni River watershed that is upstream from the Zuni Indian Reservation on Federal, State, Indian, and private lands;

(8) an effective watershed management plan for the Zuni River watershed requires voluntary cooperation among the—

(A) Soil Conservation Service;

(B) Forest Service;

(C) Bureau of Indian Affairs;

(D) Zuni Indian Tribe;

(E) Ramah Band of the Navajo Tribe of Indians;

(F) Navajo Nation;

(G) State of New Mexico; and

(H) private landowners; and

(9) all persons living within the Zuni River watershed will benefit from a cooperative effort to rehabilitate and manage the watershed.

SEC. 3. STUDY, PLAN, AND REPORT.

(a) STUDY AND PLAN.—

(1) IN GENERAL.—The Secretary of Agriculture, acting through the Chief of the Soil Conservation Service and the Chief of the Forest Service, the Secretary of the Interior, acting through the Assistant Secretary for Indian Affairs, and the Tribes, shall—

(A) conduct a study of the portion of the Zuni River watershed that is upstream from the Zuni Indian Reservation, as depicted on the map entitled "Zuni River Watershed", which shall be on file and available for public inspection in the—

(i) New Mexico State Office of the Soil Conservation Service;

(ii) Albuquerque Area Office of the Bureau of Indian Affairs; and

(iii) tribal offices; and

(B) prepare a plan for watershed protection and rehabilitation on both public and private lands.

(2) PLAN COMPONENTS.—The plan required by paragraph (1)(B) shall include—

(A) a watershed survey describing current natural and cultural resource conditions;

(B) recommendations for watershed protection and rehabilitation on both public and private lands;

(C) management guidelines for maintaining and improving the natural and cultural resource base on both public and private lands;

(D) a system for monitoring natural and cultural resource conditions that can be coordinated with the system developed by the Zuni Indian Tribe;

(E) proposals for voluntary cooperative programs, that implement and administer the plan required by paragraph (1)(B), among—

(i) the Department of Agriculture;

(ii) the Department of the Interior;

(iii) the Zuni Indian Tribe;

(iv) the Ramah Band of the Navajo Tribe of Indians;

(v) the Navajo Nation;

(vi) the State of New Mexico;

(vii) private landowners within the portion of the Zuni River watershed that is upstream from the Zuni Indian Reservation; and

(viii) other public or private agencies;

(F) a project plan that—

(i) outlines tasks necessary to implement the plan required by paragraph (1)(B);

(ii) recommends completion dates; and

(iii) estimates the costs of the tasks; and

(G) a monitoring plan that—

(i) outlines tasks for monitoring and maintaining the watershed; and

(ii) estimates the annual cost of performing the tasks.

(b) REPORT.—Not later than 4 years after the date that funds are made available for the study and the preparation of the plan as required by subsection (a)(1), the Secretary of Agriculture, the Secretary of the Interior, and the Tribes shall submit to the Select Committee on Indian Affairs of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives a written report containing—

(1) the full text of the study and the plan; and

(2) an executive summary of the study and the plan.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (S. 1350), as amended, was passed.

The title was amended so as to read: "An Act to formulate a plan for the management of natural and cultural resources on the Zuni Indian reservation, on the lands of the Ramah Band of the Navajo Tribe of Indians, and the Navajo Nation, and in other areas within the Zuni River watershed and upstream from the Zuni Indian Reservation, and for other purposes.".

Mr. BINGAMAN. Mr. President, I am pleased the Senate has passed S. 1350, which will bring together as partners the people who live and work within the Zuni River Watershed to formulate a plan for the management of natural and cultural resources on lands within the watershed.

For decades, the people of Zuni Pueblo, and others living and working within the watershed of the Zuni River, have watched both their land and their history erode away. Every year, topsoil, washed down from the mountains and mesas, is swept off by the spring runoff and floods. During these floods expanding arroyos also threaten the archaeology of the area. Nearly 2,000 archaeological sites within the Zuni Reservation alone have been damaged as a result of this erosion.

The destructive erosion of the Zuni River watershed goes back to the era of historic logging and overgrazing fostered by previous Government policies and decisions. Since that time, land management practices have changed, but the people living within the watershed are left with a legacy of barren landscapes and the continuing threat of erosion and flood.

This bill takes positive action. Its enactment will produce a plan for the management of the watershed which not only will prevent further degradation, but also will identify what can be done to rehabilitate these lands. It will foster voluntary cooperation among the Zuni Indian Pueblo, the Ramah Band of the Navajo tribe of Indians, the Navajo Nation, the State of New Mexico, the Soil Conservation Service, the Forest Service, the Bureau of Indian Affairs, and private landowners. All people within the Zuni River watershed should benefit from this cooperative planning effort to restore these affected lands.

The Zuni watershed bill reflects a comprehensive approach to resource management and fosters resource partnerships to accomplish this. It encourages land managers to look beyond administrative boundaries to tackle the problem of an entire watershed in trouble. It provides an opportunity for strong, dynamic partnerships between everyone affected by the watershed's degradation—Indian governments, land management agencies, and private landowners. The result will be the conservation of the natural and cultural resources in the watershed, and new

and lasting partnerships for resource management.

Mr. MITCHELL. Mr. President, I move to reconsider the vote.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MEASURE INDEFINITELY POSTPONED—S. 962

Mr. MITCHELL. Mr. President, I ask unanimous consent that Calendar No. 246, S. 962, be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

SALUTE TO DENNIS SHEA

Mr. DOLE. Mr. President, during the past few weeks, there have been more than a few shots taken at Senate staffers. But, as we all know, the vast majority of the men and women who work in our office are outstanding and hard-working public servants.

Tonight, I want to briefly salute one of the best.

Dennis Shea has been legal counsel in my office since November 1988. In that time, he has handled a vast array of issues, with integrity and intelligence—tough issues, such as banking, S&L's, campaign finance reform, constitutional law, and crime.

His special passion, however, has been civil rights. With the exception of Senator DANFORTH, I would venture to say that no one has worked harder—not only during the past months—but throughout the past years—to reach the historic compromise which we passed earlier this evening.

Dennis knew this legislation backward and forward. He knew where the sticking points were, and he was always seeking ways to find a middle ground. Throughout the negotiations of the past few days, he was either on the phone with a Senator or White House staff, or personally working with Senators and other staffers to get the job done.

The passage of this legislation marks Dennis' final assignment in my office. He is returning to his home in New York, where he is considering a run for Congress.

And if I know anything about Dennis—about his energy, his intelligence, and his desire to serve the people—then I would not be at all surprised if he returns to Washington in January 1993 as a U.S. Congressman.

THE CIVIL RIGHTS BILL

Mr. MITCHELL. Mr. President, I want to add to the statement I made earlier commending a number of people for their contribution to the civil rights bill. I mentioned a large number of Senators including Senator DOLE, Senator HATCH, Senator KENNEDY, Senator DANFORTH, and I should have mentioned Senator JEFFORDS who was one of the key figures in this entire effort and without whose patience, perseverance, and persistence this result would not have been achieved. I commend Senator JEFFORDS for his constructive role in that process as well as several other Senators that I mentioned at the time.

APPOINTMENTS BY THE PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The Chair, on behalf of the President pro tempore, in accordance with Senate Resolution 82, 102d Congress, appoints the Senator from Wisconsin [Mr. KOHL] to the Select Committee on POW-MIA, vice the Senator from Arizona [Mr. DECONCINI].

The Chair, on behalf of the President pro tempore, pursuant to Public Law 99-498, appoints Dr. William C. Hiss, of Maine, to the Advisory Committee on Student Financial Assistance.

NATIONAL ENERGY POLICY ACT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 106, S. 1220, the National Energy Policy Act.

The PRESIDING OFFICER. Is there objection?

Mr. BAUCUS. I object.

The PRESIDING OFFICER. Objection is heard.

CLOTURE MOTION

Mr. MITCHELL. Mr. President, I now move to proceed to the consideration of Calendar No. 106, S. 1220, and I send to the desk a cloture motion on the motion to proceed to the bill.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the motion to proceed to the consideration of S. 1220, a bill to reduce the Nation's dependence on imported oil, to provide for the energy security of the Nation and for other purposes:

Bennett Johnston, David Boren, Lloyd Bentsen, Daniel Inouye, Kent Conrad, John Breaux, Jeff Bingaman, Malcolm Wallop, Pete V. Domenici, Larry Craig, Steve Symms, Don Nickles, Richard Shelby, Alan Simpson, Trent Lott, Orrin Hatch.

Mr. MITCHELL. Mr. President, I now withdraw the motion to proceed.

The PRESIDING OFFICER. The motion is withdrawn.

Mr. MITCHELL. Mr. President, accordingly, under the rules, a vote will occur on the cloture motion on the motion to proceed to the bill 1 hour after the Senate convenes on Friday unless agreement is reached as to a different time. I will discuss the matter tomorrow with the distinguished Republican leader and with several interested Senators, Senator WALLOP, Senator JOHNSTON, Senator BAUCUS, and several others, to see if they have any interest in reaching an agreement on a specific time on Friday. But as of now, if there is no agreement, the vote will occur 1 hour following the convening of the Senate on Friday.

Mr. President, unless the distinguished Republican leader has anything further.

Mr. DOLE. I would just say I hope maybe by sometime tomorrow or early Friday we might agree to have the vote Tuesday evening. I understand right now there is objection to that on the cloture vote.

We can keep trying, I guess.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, if there is no further business, and the distinguished Republican leader has nothing further, I now ask unanimous consent that Senator CRANSTON be recognized to address the Senate for up to 7 minutes and that following the completion of his remarks, Senator GORTON be recognized to address the Senate for such period of time as he may choose, and that Senator GORTON's remarks, which relate to the Interior appropriations conference report, be placed in the RECORD following the remarks of Senators BYRD and NICKLES on that subject, and that upon the completion of Senator GORTON's remarks the Senate stand in recess under the order.

The PRESIDING OFFICER. Without objection, it is so ordered.

CHINA'S DANGEROUS NUCLEAR TRADE CONTINUES UNCHECKED

Mr. CRANSTON. Mr. President, on October 16, the following headline appeared in the Washington Times over a news story "Chinese Build Reactor for Iranian Program." The first paragraph states:

The Chinese Government is building a nuclear research reactor in Iran that is part of an Iranian secret weapons program, according to Bush administration officials.

This morning, the following headline appeared over an article in the Washington Post: "Officials Say Iran is Seeking Nuclear Weapons Capability. China Sale of Equipment Worth Millions Cited." The first paragraph reads, in part:

* * * Iran is aggressively seeking to develop a nuclear weapon and China has provided Iran with equipment capable of making some fissile material for such a weapon, according to Bush administration officials.

These officials remain anonymous. A man who has not remained anonymous is Deputy President Ataollah Mohajerani, of Iran, who, in an interview distributed by the official Iranian news agency, said:

Because the enemy—

Clearly meaning Israel—

because the enemy has nuclear facilities, the Muslim states too should be equipped with the same capacity.

Mohajerani, who normally is responsible for legal and parliamentary affairs but occasionally speaks for Iranian President Ali Akbar Hashemi Rafsanjani on foreign policy matters, said, "Muslims should strive to go ahead."

And he said:

"I am not talking about one Muslim country, but rather the entirety of Muslim states. * * * We witnessed the destruction of Iraq's nuclear devices" by parties that he said have no business interfering in such matters.

Meaning, obviously, Israel.

Mr. President, I today, as chairman of the Subcommittee on East Asian and Pacific Affairs, conducted a hearing that primarily delved into these matters. We had a witness from the State Department and the Department of Defense, and I heard from others. After being briefed today by State and Defense Department officials, my concerns about press reports that Iran is developing a nuclear weapons capability with Chinese assistance have been greatly intensified.

I am deeply troubled that the administration has not done enough on its own and with other nations to discourage Chinese proliferation activities.

We did not get straight answers from the administration in the past about Chinese involvement in the export of weapons of mass destruction.

The administration owes the Congress and the American people an explanation about why only last June the State Department told the Senate that the Chinese were not aiding Iran in the nuclear area.

Secretary Baker should either not go to Beijing on his impending trip to Asia or should go for the primary purpose of making plain that China's proliferation policy is unacceptable and will lead to United States actions that the Chinese will regret.

I am unsatisfied with the administration's meager assurances provided at this morning's hearing, which I chaired in the East Asian and Pacific Affairs Subcommittee, that, although it is concerned about reports of weapons and nuclear technology transfers by China, it finds that China has been "somewhat cooperative" in controlling weapons proliferation.

Frankly, I find it difficult to understand what "somewhat cooperative" means in this very vital, dangerous matter.

Assistant Secretary of State Richard Solomon cited China's pledge to sign the Nuclear Non-Proliferation Treaty and its decision to refrain from sales it had been contemplating as evidence of cooperation. The administration reasserted its position that it possesses a "broad range of tools" to discourage China from transferring weapons technology. Secretary Solomon reiterated that the United States policy of engagement with China is the "only realistic way to deal with these issues."

Mr. President, I am not convinced that the United States is doing what it can—and there are many things it could do—to prevent China from peddling lethal materials and weapons. The consequences of further inaction will be very, very grievous.

According to today's news reports, China has plans to sell Iran millions of dollars worth of calutron equipment used in the manufacture of highly enriched uranium—a primary component of nuclear weapons. Proliferation experts have questioned this sale, stating that calutron devices are not normally part of a civilian nuclear energy program. Even administration officials have questioned the sale, stating that it appears at odds with China's supposed cooperative stance on nuclear proliferation matters.

Chinese willingness to help the Iranians acquire nuclear weapons capability would exacerbate the underlying tensions in the region and works at cross purposes with our efforts to bring a real and comprehensive peace to the Middle East. The Madrid conference, an important step forward in the peace process—symbolized by the olive branches waved by Palestinian delegates—is overshadowed by this symbol of enmity, the specter of an Islamic bomb. Revelations about Iran's quest for nuclear weapons capability serve as a sharp reminder that there are many sources of instability in the Middle East. China's role in supplying equipment to the Iranians threatens to open up an era of nuclear brinkmanship.

Today's discussion also indicates that the administration's most-favored-nation policy for China has not worked to improve Chinese proliferation policy. The administration has told Congress over and over again that it is opposed to placing conditions on the renewal of China's most-favored-nation trade status because conditions would "hold our single most powerful instrument for promoting reform hostage to the reactions of the hard liners in Beijing." Well, Mr. President, just how far has the "single most powerful instrument" gotten us in weapons proliferation control? All the way to Iran, perhaps.

Today's reports and hearing reaffirm my view that new international methods for controlling proliferation are necessary. This morning I proposed that it is time to consider the creation of a Conference on Security and Cooperation in Asia to examine intraregional developments that are causing extraregional problems such as nuclear weapons proliferation.

I believe we need a much stronger international regime that will be capable of doing more than the preset, obviously failing, regime is doing to prevent nuclear proliferation. Whatever the vehicle, the United States must take an active leadership role within the international community in controlling renegade states.

Let me finally say, Mr. President, the story is not yet told. The bottom line is not yet written on whether or not China will get most-favored-nation status. And perhaps these revelations will cause some second thinking on that subject.

I ask unanimous consent that the Washington Times and Washington Post articles be printed in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Washington Times, Oct. 16, 1991]

CHINESE BUILD REACTOR FOR IRANIAN PROGRAM

(By Bill Gertz)

The reactor site was photographed by a U.S. intelligence satellite last month in the early stages of construction at an unspecified location in western Iran, said officials who spoke on condition of anonymity.

"It's a research reactor that almost certainly will be used to build nuclear weapons," said one official familiar with intelligence reports.

Another official said China's involvement in the Iranian reactor program is a further indication that Beijing is not heeding U.S. calls to limit the proliferation of nuclear technology to the unstable region.

Technicians affiliated with the China Nuclear Energy Industry Corp., a quasi-government company, are reportedly involved in the Iranian reactor program, this official said. The firm markets nuclear technology and low-enriched uranium.

The Chinese also are building a reactor in Algeria that is believed by U.S. intelligence officials to be part of a covert nuclear weapons program.

In September, the chief of Iran's Atomic Energy Organization, Reza Amrollahi, said Iran would have several nuclear power plants within 10 years. He has denied Iran "is capable of making atomic bombs."

Few details are known about Iran's drive to build a nuclear bomb. But the National Intelligence Council, an analytical arm of the office of the CIA director, issued a major interagency report in June that stated Iran is one of three developing nations building a nuclear bomb.

Algeria and Iraq also are engaged in nuclear arms programs.

A spokeswoman for the State Department's Near East and South Asia bureau declined to comment on the construction of the Iranian reactor because it would involve "sensitive intelligence sources and methods."

"We have made clear our concerns about Iran's commitment to its Nuclear Non-proliferation [Treaty] obligations," the spokeswoman said. Iran is a signatory of the treaty.

The State Department, as a matter of broad policy, is trying to halt the spread of nuclear weapons to the Middle East, including Iran, she said.

At a meeting of the International Atomic Energy Agency in Vienna last month, Mr. Amrollahi said Iran would complete construction of a nuclear facility at Bushehr, in southwestern Iran on the Persian Gulf coast, which was left unfinished by German companies.

In addition to nuclear cooperation, Iran also has sought to purchase Chinese M-11 ballistic missiles.

[From the Washington Post]

OFFICIALS SAY IRAN IS SEEKING NUCLEAR WEAPONS CAPABILITY

(By R. Jeffrey Smith)

The Chinese Government is building a nuclear research reactor in Iran that is part of an Iranian secret weapons program, according to Bush administration officials.

The U.S. intelligence community has recently concluded that Iran is aggressively seeking to develop a nuclear weapon and that China has provided Iran with equipment capable of making some fissile material for such a weapon, according to Bush administration officials.

Discovery of the Chinese sale to Iran comes amid disclosures of an unexpectedly advanced nuclear weapons program in neighboring Iraq. Some U.S. analysts now suspect that Iran may be seeking to do what Iraq has been blocked from doing and build a nuclear weapon that can be brandished in the Middle East.

As recently as June, U.S. officials said there was no evidence that China was assisting any effort by Iran to make nuclear weapons. Administration officials said their new concern about Iran's intentions was heightened last week when a senior Iranian official expressed interest in building a nuclear arsenal to match that believed held by Israel.

In an interview distributed by the official Iranian news agency, deputy president Ataollah Mohajerani said that "because the enemy has nuclear facilities, the Muslim states too should be equipped with the same capacity."

Mohajerani, who normally is responsible for legal and parliamentary affairs but occasionally speaks for Iranian President Ali Akbar Hashemi Rafsanjani on foreign policy matters, said "Muslims should strive to go ahead" because nuclear weapons can enable countries to achieve a military superiority over potential enemies.

"I am not talking about one Muslim country, but rather the entirety of Muslim states," he said, noting that "we witnessed the destruction of Iraq's nuclear devices" by parties that he said have no business interfering in such matters.

U.S. officials said the remarks may represent a significant statement of Iranian intentions. "Iran is trying to do things on the cutting edge of nuclear technology that they would not find interesting if they did not have weapons in mind," said one official, adding that the Iranian program is still believed to be at an earlier stage of development than was Iraq's program before the start of the Persian Gulf War last January.

While declining to provide details, the official said the U.S. intelligence community had concluded after a review that Iran is seeking "much more [technology] than would be needed" to develop a civilian nuclear power network, which Iranian officials routinely have claimed is their sole objective.

"They have tremendous social needs, and they are a major exporter of oil, yet they are spending all this money on nuclear-related equipment," the official said. "It doesn't make any sense."

In addition to evidence of nuclear cooperation between Iran and China, administration officials site recent efforts by Iran, so far unsuccessful, to obtain nuclear-related technology from Brazil. A U.S. government analyst, speaking on condition he not be named, said 90 percent of what Iran is seeking from foreign suppliers can be used equally for nuclear weapons and civilian power, providing a ready "cover" for the weapons-related work. Officials said the Iranian shopping list includes nuclear fuel, equipment for handling and processing fissile materials, and nuclear reactors to replace those destroyed in the 1980-88 war with Iraq.

China signed an agreement in June 1990 to provide what it described as a "micro-nuclear reactor" for installation at Esfahan in central Iran. It also has provided training for Iranian nuclear engineers and sent delegations of scientists to Iran, a U.S. government source said.

But the Iranian purchase from China that recently caught U.S. attention involved calutron equipment worth millions of dollars, according to government officials. The equipment is considered capable of producing highly enriched uranium—a vital component of nuclear weapons—through a process of electromagnetic isotope separation.

Officials described the equipment as similar to the calutron devices discovered in Iraq last summer during international inspections there. Iraq had been preparing secretly to operate hundreds of the relatively crude devices, leading U.N. experts to estimate that the Baghdad regime could have produced a single nuclear weapon in 12 to 18 months.

The quality of Chinese-made equipment sold to Iran was not sufficient to produce even a single bomb's-worth of enriched uranium, U.S. officials said. But they said the sale amounts to a significant transfer of technology that Iran could readily duplicate.

"You would not use calutrons for a civilian nuclear power program," said Leonard S. Spector, a nuclear proliferation expert at the Carnegie Endowment for International Peace here. "What's disturbing is that the recipient can take such a device and advance rapidly without extensive foreign assistance" in producing a sufficient quantity of enriched uranium for a single bomb.

Several officials said that China's sale of the calutron equipment appeared at odds with routine assurances by Beijing that it neither encourages nor participates in nuclear proliferation, nor provides assistance to other countries in developing nuclear weapons. They said the sale appeared to grow out of the close Iranian-Chinese ties developed during the mid-1980s, when government-affiliated corporations run by family members of senior Chinese leaders made huge profits by selling to both sides during the Iran-Iraq war.

The PRESIDING OFFICER. Under the previous order the Chair recognizes the Senator from Washington [Mr. GORTON].

RELIEF FOR THE NORTHWEST

Mr. GORTON. Mr. President, 2 weeks ago this Senator offered an amendment to the Interior appropriations bill while it was being considered by the conferees from the House and Senate. That amendment represented the end game in a several-week-long effort to produce short-term relief for the distressed timber-based communities of the Pacific Northwest. At the beginning of that period, my good friend and thoughtful House colleague representing the Sixth District of Washington, NORM DICKS, with my help, and that of Senator HATFIELD, attempted to draft a well-balanced amendment for interim relief that would have protected the northern spotted owl, left old-growth forests virtually untouched and raised the 2-year supply of timber in the pipeline by approximately 3 billion board feet. That attempt failed, primarily because of the influence of the environmental lobby with key Members of the House of Representatives. My last ditch attempt consisted of one paragraph from the Dicks amendment, which also was struck down for no reason other than that the environmental organizations oppose every amendment that attempts to address the spotted owl/old growth crisis in any kind of balanced fashion.

Mr. President, national environmental organizations unleashed their full artillery on two amendments even though they would have fully protected the spotted owl and practically every old growth tree. They even went so far as to take out a full-page advertisement in Roll Call, a Capitol Hill newspaper, claiming that this Senator was threatening to cut down the last stick of old growth in the Pacific Northwest. That, Mr. President, is categorically false. But it does illustrate the fact that these groups have a new agenda and lack any respect for the truth.

This new agenda does not involve just spotted owls and old growth forests. Apparently, the new objective of these critics is the destruction of the entire timber-based, rural economy of the Pacific Northwest and, with it, the lives of hard-working families. Mr. President, they have gone too far.

The original amendment that Congressman DICKS and I began work on would have implemented last year's Jack Ward Thomas Report on all Federal forestlands in the States of Oregon and Washington. That report is not popular in timber country. But, as much as I have criticized the recommendations of the Thomas Report as affording more protection for the spotted owl than is necessary for their survival, its application for 1 year would have brought next year's timber sale program on Forest Service land to approximately 2.6 billion board feet. This would have meant greater stability for timber communities and the survival of thousands of jobs there. While I do not accept the Thomas Report as an appropriate, long-term solution, and never will, I would have accepted it during the interim in order both to protect the owl and to keep rural, Northwest communities reasonably viable.

The amendment also was designed to lift guidelines issued illegally by the

Fish and Wildlife Service that imposed onerous restrictions on State and private landowners. In place of those guidelines, the amendment would have protected a 70-acre circle around each owl nest site and activity center of a pair of northern spotted owls on State and private lands, a level of protection the Fish and Wildlife Service accepted as sufficient on those nonfederal lands. This provision of the amendment was critical to my constituents in the state of Washington. Because of the location of spotted owls and the method employed in the Thomas Report for protecting those owls, the implementation of the Thomas Report would result in far greater benefit to the people of Oregon than of Washington. This second paragraph was designed to help those who rely on State and private timber and thus would have benefited the people of Washington more than Oregon because of our different land mix.

The amendment also would have expedited Forest Service administrative appeals, without in any way diminishing the right to appeal. Another provision would have directed the recovery team for the northern spotted owl to seek to limit as far as possible the loss of employment resulting from the implementation of a recovery plan for the owl.

Mr. President, the Dicks amendment embodied five very simple and reasonable objectives:

First, it would have protected the northern spotted owl with the most restrictive scientific plan to date;

Second, it would have protected practically every old-growth tree in the Pacific Northwest;

Third, it would have freed last year's Federal sales program from injunctions and protected thousands of jobs;

Fourth, it would have hastened a much-needed review of the Forest Service's administrative appeals process and revoked the existing process until a more efficient one is in place; and

Fifth, it would have freed thousands of acres of State and private, non-old-growth forestland from illegally imposed restrictions.

Mr. President, I cannot offer enough praise to Congressman NORM DICKS. He worked long and hard to bring this effort to fruition and his leadership kept us headed in the right direction. Without NORM, we would not have come as close as we did. The people of Washington should thank Congressman DICKS. He is a leader and a statesman who has the interests of both the Pacific Northwest region and the Nation in mind, not just those of his own district.

This amendment did not fail because of the involvement of Congressman DICKS. It failed despite his hard work. The Congressman received personal assurances of support from the Speaker of the House. The Speaker wanted a short-term amendment to the appropriations bill, or so we had heard. But when Congressman DICKS reported to the influential chairman of the House Interior Committee, the House Agriculture Committee and the Subcommittee of the Merchant Marine and Fisheries Committee on Wildlife Conservation, those chairmen strongly opposed any amendment to the Interior appropriations bill and the support of the Speaker evaporated. Mr. DICKS was left in the unenviable position of being both supported and opposed by his own party, when the Speaker failed to help and the Congressman was left hanging high and dry.

We were told that the House chairmen were prepared to move forward on authorizing legislation on this subject. Although this assertion only helped to frustrate our attempts to obtain some short-term relief on the appropriations bill, it is reassuring to hear that these chairmen have rededicated themselves to a comprehensive, long-term solution to this very difficult problem—this year, because it is during this year—now—that relief is necessary.

While his own party in the House was busy frustrating his efforts, back home Congressman DICKS was the target of an unfavorable editorial in the Portland Oregonian. The Oregonian criticized Mr. DICKS on the grounds that it was a "run around the committees that ought to be working on [a] long-term bill." We will soon see how effective the Oregonian is in causing that result.

Congressman DICKS was criticized by yet another quarter in Oregon: The Oregon timber industry. That industry was opposed to any amendment that would impede any perceived progress being made in convening the Endangered Species Committee, the so-called God Squad. The concern centered on the fact that the Bureau of Land Management, which manages no forest land in Washington but thousands of acres in Oregon, has successfully convened a God Squad in accordance with the Endangered Species Act. If Congress had implemented the Thomas Report on Federal lands and provided management pursuant to that report was sufficient for compliance with the Endangered Species Act, none of the BLM's timber sales during that period could be submitted to the God Squad. We got the message loud and clear that the Oregon timber industry was more interested in the risky possibility that the God Squad would rule in its favor than it was in an amendment that would boost significantly the overall supply of timber in Oregon and Washington. This opposition was regrettable, since the implementation of the Thomas Report—at the core of the amendment—would have benefited both States, but primarily Oregon.

In the end, however, this opposition hardly mattered since a preemptive veto was imposed by the chairmen of influential House committees and the national environmental organizations. In light of all of this opposition, Congressman DICKS had no choice but to withdraw the amendment and abandon a sinking ship.

Despite growing hostility to the amendment, I felt the need to offer separately the provision that lifted the illegal regulations plaguing non-Federal landowners. Congressman DICKS enthusiastically supported this effort. The provision for State and private lands, standing alone, had little to do with Oregon, very little to do with spotted owls and nothing at all to do with old growth forests. This amendment should have avoided every source of opposition we heard to the larger amendment. That assumption proved false, however, when I offered it in conference. Much to our surprise, the chairman of the House Interior Appropriations Subcommittee strongly opposed the amendment. The chairman of the Senate Agriculture Committee forwarded a letter of opposition to the chairman of the Senate Appropriations Committee. And, despite the overwhelming assistance this amendment would provide to working families in the State of Washington, the amendment was actively opposed by the senior Senator from my State.

Even this small, innocuous amendment failed. During the debate in the conference committee, however, the distinguished chairman of the Senate Appropriations Committee gave a much-welcome statement of support for our cause. Chairman BYRD told us, in no uncertain terms, that he understood the plight of working people and said that he would vote for the relief proposed in both amendments as a part of general authorizing legislation, even though he felt constrained to bow to the objections of committee chairmen to an appropriations rider. The chairman referred to his own constituents in the coal industry who suffered, and continue to suffer, and he expressed his sympathy. I thank the distinguished chairman and hope that his support will help bring this issue to a successful conclusion some day in the future.

I would also like to thank the senior Senator from Oregon [Mr. HATFIELD]. Senator HATFIELD was involved throughout the negotiations on the Dicks amendment and he supported the idea of an appropriations amendment in order to provide short-term relief to his constituents in Oregon timber communities.

As I have said, Mr. President, the issue is not spotted owls or old growth. Even a minor amendment that would have left both old growth and the owl protected was the subject of intense opposition from national environmental organizations and their backers in Congress. No, this issue is about a slow, methodical, and well-financed effort to lock up every acre of Federal land and now, it would seem, State and private land as well.

Richard Larson, in the Seattle Times of Sunday, October 6, published a graph labeled "Land Withdrawn from Timber Harvest." The graph illustrates precisely the trend to which I refer. In the State of Washington, the Federal land base consists of 10.3 million acres. Prior to 1980, nearly 3 million acres, or 28 percent, were set aside in national parks and wilderness areas. After 1980, more than 1 million acres, or 10 percent, were placed off-limits in national parks, monuments, and wilderness areas.

The National Forest Management Act of 1976 resulted in the withdrawal of 3.1 million acres from traditional multiple use, including timber harvest. This was the largest single removal ever at 30 percent. Forest Service planning pursuant to the National Forest Management Act also resulted in the removal of another 967,000 acres from timber production in Washington.

In 1990, along came the northern spotted owl and the Thomas Report. That report recommended that the Federal Government protect an additional 997,000 acres in Washington for the northern spotted owl and the Forest Service obliged. Finally, the latest designation of critical habitat by the Fish and Wildlife Service would withdraw an additional 164,000 acres. Although Larson's chart does not illustrate the effects of Judge Dwyer's injunction, his decision set aside 66,000 acres more.

The chart shows the total Federal land base in Washington to be 10.3 million acres. Admittedly, this is somewhat misleading because some of the acres removed for national parks and wilderness areas are not commercial forests. But no more than 50 or 60 percent of this land—or 2.4 million acres—consists of rocks, meadows, and ice. After removing 2.4 million acres from both the total Federal land base in Washington and those acres designated as national parks and wilderness, the total Federal commercial forest land base in Washington is 7.9 million acres and of that total, 6.9 million acres is currently off limits.

When all is said and done, only 1 million acres, a mere 12.5 percent of Federal commercial forests in the State of Washington, are available for timber harvest in that State. If this trend continues, the remaining 12.5 percent will soon be locked up as well.

Mr. President, I am frustrated by the inability of this Congress to solve the spotted owl/old growth problem. I am frustrated by the inability to provide even short-term relief. The most innocuous and reasonable amendment cannot gain the support of the environmental organizations. Mr. President, I suspect that even an amendment that set aside all 7.9 million acres of Federal land in Washington State and one that preserved the status quo of injunctions, land set-asides, economic dislocation, and human suffering would not be enough. The groups apparently will not be satisfied until all public forests in the States of Washington and Oregon, State as well as Federal, are shut down and with them the communities that depend on public forests for their sustenance. As long as the centralized, urban, service-based, economy that supports their membership is thriving, they will continue to advocate policies that devastate rural communities that are out-of-sight, out-of-mind.

Perhaps my suspicion that the objective of this intense opposition is not the protection only of the owl or old growth, and is instead aimed at a complete and methodical removal of the entire public forest land base is in error. But it can easily be tested. I have one question, one challenge for the environmental organizations and their representatives in Congress: I challenge these groups to point specifically to the areas of public forest land that they will permit, with certainty, to be cut and managed for timber production now and for the indefinite future. If they cannot make such a commitment, they bear the total responsibility for the drastic consequences—the destruction of tens of thousands of jobs and lives, and of dozens of vibrant communities.

Worldwide demand for wood products will not abate. In fact, researchers predict a steady rise in worldwide demand. If consumers do not buy their wood products from this country, then simple international economics tells us they will go elsewhere, where the environmental laws are less stringent than they are in the Northwest. If you think the South American rainforests are being overcut now, wait until world demand shifts from our trees to theirs.

The result of the policies that have led to this dead end will be devastated lives, lost opportunities, a worse national trade deficit, and a degraded world environment. This is an unacceptable result, and one that all Northwest Members of Congress must fight against.

Thank you, Mr. President. I ask unanimous consent that the Seattle Times article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Seattle Times, Oct. 6, 1991]

FROM TIMBER TOWNS, A CRY FOR COMPASSION

(By Richard W. Larsen)

It was a loud cry of human pain, but you probably didn't hear it or pay much attention to it.

Carol Owens explained how the anguish of prolonged unemployment and uncertainty about the future can damage even the most resilient psyche in people of all ages—especially the children.

"Children are the barometers of the problem," explained Owens, director of human services for Clallam County. She told of behavioral changes, dropoffs in schoolwork, and other symptoms.

In families that may once have had only minor problems, "there's more violence, more substance abuse. . ." Owens added.

When the fathers are thrown out of work, there's not only loss of the paycheck, but Mom, Dad and kids usually are stripped of medical insurance. Other speakers described other pain, especially the plunge of local economies and the financial crises hitting schools and county government.

If that epidemic of distress were hitting thousands of men, women and children and the major businesses in one of our metropolitan areas, it would be the hearttugging top story on television and in the rest of the news media.

But all this went without much news play: It was just another description of what's happening to people living away from the media centers—in small towns such as Forks, Raymond, Darrington, Hoquiam.

It all came in testimony during a recent hearing in Olympia conducted by the U.S. Fish and Wildlife Service. Topic: Effects of reducing timber harvests to meet the habitat needs of the spotted owl.

For all kinds of social/psychological reasons, the cries from people in Washington's timber communities haven't caught the attention of many people in urban areas. (On the day of that testimony in Olympia, the top story in Seattle and Tacoma was the financial trouble of Frederick & Nelson.)

In part, it's a symptom of the political and social segregation that has developed between rural and urban Washington. And, because it's complicated and seems to drone on and on, the issue of the spotted owl and timber becomes only a monotonous, background hum in the daily life of most of the state.

The spotted owl rides high on a wide tide of environmental concerns. As one of the witnesses told the federal panel at Olympia, there's a bias among those who, without facts, assume that thousands of acres of Washington forestlands—especially federal forests—are being laid waste by mindless, excessive tree cutting.

During the past century, in fact, the bulk of all federal landholdings across the state have been withdrawn from timber harvest. Data collected by the Northwest Forestry Association portray the chronology of forest preservation in the state:

[Graph not reproducible in the Record.]

During the 1930s Congress created the national parks—Mount Rainier and Olympic—and national recreation areas such as the North Cascades. In all, nearly 3 million Washington acres went into preservation status, including much of the state's commercial-forest base.

During and after the 1970s came the wilderness-area setasides on other federal lands—the scenic Alpine Lakes, Glacier Peak, Mount Baker, the vast Pasayten, and many others. Another 1-million-plus acres.

New planning that came out of the National Forest Management Act of 1976 produced the biggest-ever removal of federal forestlands from traditional multiple use that included timber harvest—about 3.1 million acres.

As part of that new planning, another 967,000 acres was to be managed for primary uses other than timber production. (The subtotal so far is 78 percent of the original federal forestland in the state.)

The Northern Spotted Owl conservation areas recommended by the Interagency Scientific Committee (ISC) increased the setasides by 997,000 acres.

And the newest critical-habitat designation for the spotted owl would withdraw an additional 164,000 acres.

That adds up to 9.3 million acres withdrawn from the original 10.3-million-acre federal forestland base. So, noted one women, timber-dependent communities find themselves struggling to exist on a residual fraction of the total federal forestland . . . and are told they must give up more.

A logger's wife drilled this Seattle writer with a question: "Why is there no compassion for us?" She protested the media's villainization of the timber worker: "We're people who care about the environment. We live here."

At the very least, she lectured me, someone should write it into the record that millions of acres of Washington forests and mountains stand preserved—a vast, rich habitat for hundreds of species of wild animals and birds, offering recreation and scenic opportunity for everyone in the state . . . forever.

OK. There it is.

Mr. GORTON. I yield the floor.

ORDERS FOR TOMORROW

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until 9:30 on Thursday, October 31; that immediately following the prayer the Journal of the proceedings be approved to date; that the time for the two leaders be reserved for their use later in the day; that there be a period for morning business not to extend beyond 10 a.m., with Senators permitted to speak therein, that Senator BOREN be recognized for up to 15 minutes, and Senator DURENBERGER for up to 10 minutes; that at 10 a.m. the Senate resume consideration of the motion to proceed to S. 1220, the energy bill, with the time from 10 a.m. to 1 p.m. to be equally divided and controlled between Senators JOHNSTON and BAUCUS; that at 1 p.m. the Senate resume consideration of the amendments in disagreement to H.R. 2686, and that Senator HELMS be recognized at that time to offer an amendment relative to the NEA and obscene material on which there be 90 minutes of debate equally divided in the usual form with amendments in order thereto, and that at the conclusion or yielding back of the time the Senate vote on or in relation to Senator HELMS' amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL TOMORROW AT 9:30 A.M.

The PRESIDING OFFICER. Under the previous order, the Senate now stands in recess until 9:30 a.m.

Thereupon, the Senate, at 7:22 p.m., recessed until Thursday, October 31, 1991, at 9:30 a.m.

CONFIRMATION

Executive nomination confirmed by the Senate October, 30, 1991:

DEPARTMENT OF LABOR

DELBERT LEON SPURLOCK, JR., OF CALIFORNIA, TO BE DEPUTY SECRETARY OF LABOR.

THE ABOVE NOMINATION WAS APPROVED SUBJECT TO THE NOMINEE'S COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.